

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA *Circuit* *For the District of Columbia Circuit*

No. 12,290
DISTRICT OF COLUMBIA, *Petitioner*,
v. **175**
THE GEORGE WASHINGTON UNIVERSITY, *Respondent*. **CLERK**

FILED AUG 28 1954

No. 12,291
DISTRICT OF COLUMBIA, *Petitioner*,
v.
THE GEORGE WASHINGTON UNIVERSITY, *Respondent*.

No. 12,292
DISTRICT OF COLUMBIA, *Petitioner*,
v.
THE GEORGE WASHINGTON UNIVERSITY, *Respondent*.

No. 12,293
DISTRICT OF COLUMBIA, *Petitioner*,
v.
THE GEORGE WASHINGTON UNIVERSITY, *Respondent*.

ON PETITIONS FOR REVIEW OF DECISIONS OF THE
DISTRICT OF COLUMBIA TAX COURT

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1

Docket No. 1401

DOCKET

Date	Proceedings	Memorandum
1953		
Nov 13	Pet. Filed. TP. notified.	Real Estate—1954
	Cc., and AA., served.	\$1,205.48
1954		
Jan 5	Hearing set for Jan 25. TP., CC., & AA served.	
Jan 20	Pet's Motion for continuance—Granted to Feb 17.	
	All parties served.	
Feb 15	Resp mot for cont—Granted to Feb 19 all parties served.	
Feb 19	Resp mot for cont—Granted to Mar 1 all parties notified.	
Mar 1	Hearing—Updegraff for District.	
Mar 10	Resp mot for further hearing — granted—set for Mar 19 all parties served.	
Apr 5	Memorandum brief filed by petitioner.	
Apr 16	Respondent's Brief	
Apr 29	Findings of Fact, Opinion and Decision	
May 4	Stipulation.	
May 21	Pet. for Review, Statement of Points, Designation of Record.	
May 28	Counter-Designation of Additional Portions of Record on Petition for Review	

2

PETITION

The above named Petitioner appeals from assessment of taxes against it and avers as follows:

1. Petitioner is a corporation with its principal offices at 725 21st Street, N. W., Washington 6, D. C.

2. The taxes in controversy are real property taxes for the 1954 fiscal year in the amount of One Thousand Two Hundred Five Dollars and Forty-eight Cents (\$1,205.48). The statements of taxes due were dated on or about September 1, 1953, as will appear from copies thereof attached hereto as Exhibit "A". No tax was paid nor was such tax required to be paid by Petitioner by virtue of the provisions of Section 47-801 (e) of the Code of Laws of the District of Columbia. The real property, which is the subject of the tax, is located within the District of Columbia and is known as Lots Twenty (20), Twenty-four (24), Twenty-five (25), Twenty-nine (29), Eight Hundred Twenty-three (823), Eight Hundred Twenty-eight (828), Eight Hundred Thirty (830), Eight Hundred Thirty-one (831), Eight Hundred Thirty-two (832), Eight Hundred Thirty-three (833) and Eight Hundred Thirty-four (834), in Square Fifty-six (56).

3. The assessment of taxes is based upon the following error:

3 The Commissioners of the District of Columbia erred in holding that the real property was not exempt under pertinent provisions of the District of Columbia Code.

4. The facts upon which Petitioner relies as the basis of this proceeding are as follows:

a. Petitioner is a corporation chartered by Congress February 9, 1821, and is engaged in the operation of a University, with its principal facilities located in downtown Washington in the District of Columbia, bordered roughly by Pennsylvania Avenue, N. W., 20th Street, N. W., F Street, N. W., and 24th Street, N. W.

b. Petitioner has an enrollment of about ten thousand (10,000) students and a staff in excess of two thousand (2,000) individuals, a large number of whom commute to and from the University in private automobiles.

c. Parking facilities in the area of the University on public highways and parking areas open to the public are so limited as to afford only a very small number of spaces available to said student and faculty automobile commuters to and from the University. Therefore, Petitioner is required to furnish automobile parking space for both student and faculty automobile commuters to the University.

d. Petitioner does not own campus drives or other areas where commuting student and faculty members may find appropriate parking facilities.

4 e. Petitioner operates the assessed area, Lots 20, 24, 25, 29, 823, 828, 830, 831, 832, 833 and 834 in Square 56, as an automobile parking lot for commuting faculty members at no cost to said commuters and said parking area is not used to secure income for any other activity or purpose.

WHEREFORE, Petitioner prays that this Court may hear the proceeding, and cancel the assessments against said real property and exempt Petitioner from the payment of real property taxes upon such real property.

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TRANSCRIPT OF PROCEEDINGS

DISTRICT OF COLUMBIA TAX COURT

Docket No. 1401, et al.

THE GEORGE WASHINGTON UNIVERSITY, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

• • • • •

22 HENRY W. HERZOG was called as a witness on behalf of the Petitioner and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

THE COURT: Will you state your name and address?

THE WITNESS: Henry W. Herzog.

BY MR. EUWER:

Q. Would you state your position and address, please, Mr. Herzog? A. Treasurer, George Washington University. My home address is 5222 Duvall Drive, Washington 16, D. C.

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36 DIRECT EXAMINATION

BY MR. EUWER:

Q. Do you know what the enrollment of the petitioner in Docket Number 1401 is?

MR. UPDEGRAFF: I object. I think it immaterial.

THE COURT: What is the purpose of it?

MR. EUWER: This is the same case as Docket 1348. It involves whether or not the parking facilities for faculty members is an exempt use of property. In connection with that case, as in prior cases, we intend to show, if it is indeed necessary that it be shown, that this property is located in a highly congested urban area and a great number of the faculty and students are commuters in private automobiles, and facilities are not in existence to care for the parking of their vehicles during their attendance to duties at the university.

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42 THE COURT: That is not the answer to my question. I want to know whether you personally, as the witness, are familiar and I don't mean with every person,

but do you know generally what professors or what
43 members of the staff use automobiles?

THE WITNESS: I do, sir.

THE COURT: Go ahead.

BY MR. EUWER:

Q. What percentage of the administrative staff do use automobiles in commuting to and from the university?

A. I would say that approximately 60 per cent of them.

Q. Does the university have any parking facilities by way of campus drives or others?

MR. UPDEGRAFF: I object. It is immaterial.

THE COURT: I will overrule the objection.

THE WITNESS: We do not.

BY MR. EUWER:

Q. With respect to the assessed area in Docket 1401, Lots 20, 24, 25, 29, 823, 828, 830, 831, 832, 835 and 834 in Square 56, how is that area used?

MR. UPDEGRAFF: I do not have Lot Number 835 on my list.

MR. EUWER: That is correct.

THE COURT: Strike out Lot Number 835.

MR. EUWER: 834 is the last one.

THE WITNESS: It is used for the parking of cars by members of the faculty.

BY MR. EUWER:

Q. How many automobile parking spaces are avail-
44 able in the assessed area? A. That question has been answered in the previous testimony. I do not have that information here because I presumed it had been carried in the previous case.

Q. Do you know roughly? A. I would say approximately 125 to 150.

Q. When was the assessed area first used for this purpose? A. This area was opened on February 25, 1952.

Q. Has it been used for that purpose since that time? A. Continuously, yes, sir.

THE COURT: What streets are those lots bounded by?

THE WITNESS: It is bounded by G and H and Twenty-second and Twenty-third.

THE COURT: Does it take up the whole block?

THE WITNESS: It does not include an apartment house on the southwest corner of Twenty-second and H streets. There are two houses not owned by the university on Twenty-second Street, and it does not include Draper Hall, an engineering laboratory building that runs along G Street, and it does not include any of the property facing on the south side of H Street between Twenty-second and Twenty-third.

THE COURT: With that exception, it owns the rest of it?

THE WITNESS: And it does not include an area
45 along Twenty-third street that was used for engineering drafting rooms.

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46 BY MR. EUWER:

Q. Mr. Herzog, is any charge made for the use by the faculty? A. No charge is made.

Q. Is any income secured from this assessed area
47 for any other purpose? A. No.

Q. How is the selection made as to who may use this lot? A. Because of the limited number of spaces there, the space, the selection has to be made on the basis of seniority in academic rank.

THE COURT: Did he ask you who makes it?

MR. EUWER: I asked how.

BY MR. EUWER:

Q. How do you make the decision? A. The decision is made by one of my assistants.

Q. Are there applicants for space from the faculty for whom no space can be found? A. A great many.

MR. EUWER: I have no further questions, your Honor.

CROSS EXAMINATION

By Mr. Updegraff:

50 Q. Have you ever, within the past several months, Mr. Herzog, traveled around over in the vicinity of the location of George Washington University for the specific purpose of learning the locations and capacities of the various parking lots in that vicinity, other than those used by the university?

A. Yes.

Q. When? A. Last year.

51 Q. And you only found two? A. Yes, those are the only two that I found.

Q. You did not find one at Twenty-fourth and E Street, Northwest? A. I did not go down there, because, as I say, our property is all north of G Street.

Q. You did not find one at Twenty-second and C Street, Northwest? A. I would answer that the same as the question before.

Q. You did not find one at E Street between Twentieth and Twenty-first street? A. I did not go down there, Mr. Updegraff.

Q. You went to F Street between Twentieth and Twenty-first? A. That parking lot backs into the rear of our property off G Street.

Q. You did not find one at Twentieth and E Street, Northwest? A. I am not acquainted with that.

54 Q. There was no investigation made by the university or on its behalf with respect to all these other parking lots above and beyond the two you testified about in that area?

THE COURT: He means commercial parking lots.

55 THE WITNESS: We have not studied the commercial parking lots. I don't know that it is any concern of ours.

BY MR. UPDEGRAFF:

Q. Was it any concern of your administrative body to make available these parking lots and that the taxes of other property owners in the District of Columbia might have to be increased in order to provide parking space for the faculty members of your university?

MR. EUWER: I object.

THE COURT: I think that is a proper question.

THE WITNESS: Our concern is with our faculty who are accustomed to having parking places.

56 BY MR. UPDEGRAFF:

Q. What persons comprise the administrative staff that made this decision? Who were the persons that made the decision? A. The president of the university and the treasurer.

Q. Who is the president? A. Dr. Cloyd H. Marvin.

Q. Do you have a parking space free? A. I do.

Q. Does Dr. Marvin have a parking space free on the university grounds? A. He does.

• • • • •

57 REDIRECT EXAMINATION

BY MR. EUWER:

Q. Do you know by what class of people both the commercial parking space in the area and on the streets is used, other than the faculty and students of George Washington University? A. Government employees use that space because of our close proximity to the government offices.

• • • • •

58 Q. By what class of persons are these spaces so used? A. They are used largely by government employees.

Q. Do you know of what departments? A. The State Department, the White House staff, both State Departments, down at Twenty-first Street below E and also the Old State Department Building, and all the buildings in that close vicinity.

Q. What other buildings are there in that close vicinity? A. The American Red Cross, the Veterans Administration, the Navy Department.

Q. Are there apartment houses in the vicinity? A. There are a great many apartment houses in the area.

Q. Do you know what the number of students in the George Washington University are? A. Approximately 10,000

Q. Do you know whether or not those students or some of those students use automobiles to commute to and from the university? A. A very large number of them do.

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RECROSS EXAMINATION

BY MR. UPDEGRAFF:

Q. When you were referring to commercially operated parking lots in the vicinity of George Washington University being used by government employees of the White

61 House and so forth, what location were you thinking about, the two you testified about this morning? A. I was thinking particularly about the one F Street between Twentieth and Twenty-first Street.

Q. You don't know anything about all the other lots I have asked you about? A. I have some knowledge about the one on Twentieth Street between G and H Streets. I am not acquainted at all with those other lots you spoke of.

Q. Isn't it a fact that a great number of your students are government employees? A. Some of our students are government employees.

Q. Would you say that 50 per cent or 40 per cent of them are, or what? A. I would say 10 to 15 per cent.

• • • • •

62 THE COURT: Let us go on to the next case, Docket 1402.

MR. EUWER: Docket Number 1402, your Honor, this lot also involves a parking lot. I wonder if it is necessary to go into all the evidence we just adduced. I think it is applicable to all parking lot cases.

THE COURT: You mean as to congestion?

MR. EUWER: Yes.

THE COURT: Without objection, by counsel, is it understood that all testimony would apply equally?

MR. UPDEGRAFF: Yes.

THE COURT: All right. Now, this is as to the use.

DIRECT EXAMINATION

BY MR. EUWER:

Q. Mr. Herzog, directing your attention to Lot Number 811 in Square 77, to what use is that lot put? A. This property is used for the parking of vehicles in connection with the activities of the university.

Q. Who are entitled to use those lots for parking?

MR. UPDEGRAFF: I do not understand the last answer, if your Honor please.

MR. EUWER: I asked him who used it.

MR. UPDEGRAFF: That is what I understood. I object because I do not think the answer is responsive.

63 THE COURT: It will be stricken out and the witness will answer the question. Let us get it straight. The question concerning which you made some objection was how is it being used.

MR. EUWER: Lot Number 811, Square 77.

THE COURT: The witness went further and gave a conclusion that it was used in these activities. There is objection to that portion by Mr. Updegraff, is that correct?

MR. UPDEGRAFF: Yes, sir.

THE COURT: Which relates to the activities of the university.

MR. UPDEGRAFF: Yes, sir.

THE COURT: That part will be stricken and the rest will stay in, namely, that it is being used for a parking lot.

MR. UPDEGRAFF: As I understand, this lot and square number are identified further as 2137-2139 on H Street.

THE COURT: By whom is it being used?

THE WITNESS: By the University research individuals.

BY MR. EUWER:

Q. How many spaces are available in that lot? A. Seven.

THE COURT: When you say research individuals, to whom do you refer? Are they members of the faculty?

THE WITNESS: They are members of the University research staff.

THE COURT: Do they teach?

64 THE WITNESS: They do not teach, no, sir.

BY MR. EUWER:

Q. What is their connection with the university, Mr. Herzog? A. These particular men are connected with a research contract that the university has with the Quartermaster Branch of the War Department.

Q. By whom are they employed? A. They are employed by the George Washington University.

THE COURT: What connection has this, or what relation has this project for the Quartermaster Corps with a university which is supposed to teach students?

THE WITNESS: This particular project is in the field of psychology. It is a research adjunct of the university. We have hundreds of research contracts, research efforts on the part of the university, that are not participated in by

faculty members per se. We do research in cancer, in medicine, all types of research.

THE COURT: What advantage does a student get from this research? Will it permit you to teach better?

THE WITNESS: We think it does.

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67

BY MR. EUWER:

Q. When was this area first used by the petitioner for this purpose? A. November 3, 1952.

Q. Has it been used for this purpose since that day? A. Yes.

Q. Has it been used continuously since that day? A. It has been.

• • • • •

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CROSS EXAMINATION

BY MR. UPDEGRAFF:

Q. Mr. Herzog, when was Lot 811, which is involved in Docket Number 1402, acquired by the university, if you know? A. I did not bring that record with me. I do have a notation in my file that it was used for parking on November 3, 1952, so it was acquired prior to that date.

Q. Did it have a building on it when you acquired it? A. It did.

Q. What type of building was it? A. It was a house.

Q. It has been the practice of the university over the past few years to acquire all the houses in that area that it can, has it not? A. We are very anxious to acquire, within a certain area, all of the property that we can that fits into the orderly development of the university. We wish we had additional funds to buy additional property.

Q. Isn't it the practice of the university when it acquires a piece of property to raze the building as soon as it can?

A. No, we have a great many properties up there that are rented and for which we are paying taxes.

69 Q. Do you know whether Lot 811 was rented property before the building was removed? A. Just off-hand, I don't know.

Q. Would this be a fair statement, if you are not renting the property, you use it to store property of the university until the building is torn down? A. What was that again?

Q. I said, would this be a fair statement; if you are not renting the property, you use it to store property of the university until the building is torn down? A. Not necessarily. There are many such buildings that are used for other purposes. On Twenty-second Street we tore a building down and it is fenced in and we are paying taxes on it.

Q. Do you operate any parking lots? A. That should be Twenty-second and H Street.

Q. Do you rent any grounds for parking purposes? A. We have a few garages on the rear of properties that we are renting the dwelling that we rent for parking. I don't know that we have any lot that we rent for parking as such.

70 Q. Do you use any of those garages for housing the vehicles of any of your faculty or other employees?

A. We have about four garages that hold four cars that are used for parking.

Q. By whom? A. By university officials.

Q. Do you charge them anything for that? A. No.

Q. What properties are they? A. It is the rear of 2016 and 2018 G Street. I think those are the numbers. The buildings on those lots are used for academic classrooms and there are garages on the back of those two lots that the president of the university parks in and that the treasurer parks in.

Q. If you made those available to the general public you would charge them, wouldn't you? A. I presume so.

71 Q. Where do you park? A. I mentioned before
that I park in a garage at the rear of 2016-2018 G
Street.

Q. That is one of those free garages? A. Yes.

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73 REDIRECT EXAMINATION

BY MR. EUWER:

Q. Is any charge made for parking on Lot 811, Square
77, to the research officials? A. No.

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76 DOCKET NUMBER 1403

MR. EUWER: We will now go on to Docket Num-
ber 1403.

DIRECT EXAMINATION

BY MR. EUWER:

Q. Mr. Herzog, I refer you to Lot 830 in Square 101.

THE COURT: It is understood that the testimony, with
the objection by the respondent related thereto, will be
taken in this case as well.

MR. EUWER: As in the prior cases.

MR. UPDEGRAFF: I agree, of course, subject to the
District's objections.

THE COURT: Yes, of course.

BY MR. EUWER:

Q. Referring again to Lot 830, Square 101, premises
located at 2012 I Street, Northwest, for what purpose is
that area used? A. It is used for the parking of vehicles.

Q. What individuals use those areas? A. Certain mem-
bers of the administrative staff of the university.

Q. How many spaces are there in this lot? A. Thirteen.

Q. When was it so used for the first time for this pur-
pose? A. June 22, 1953.

77 Q. Has it been used continuously for that purpose since? A. Yes.

Q. Who are the members of the administrative staff that use this space? A. The members of the public relations office which is the building adjoining this lot and the members of my staff, certain members of my staff.

Q. By your staff, you mean the office of the treasurer and comptroller? A. Of the treasurer of the university.

Q. Is there any charge made for the use by these individuals of this area by the petitioner? A. No charge is made.

MR. EUWER: You may examine.

CROSS EXAMINATION

BY MR. UPDEGRAFF:

Q. When was this property acquired, Mr. Herzog, by the university? A. I do not have the record here, but it was acquired prior to June 23, 1953.

Q. Did it have a building on it when it was acquired? A. Yes.

78 Q. Was it used as rental property before the building was removed? A. It was.

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79 THE COURT: We will now proceed to Docket Number 1404.

This is a parking lot case, and the same rule will be applied to this as to the other, namely, that testimony concerning other parking lots, congestion, number of students, with the objection of respondent, would be applied to this case.

MR. EUWER: Yes, your Honor.

MR. UPDEGRAFF: Yes, sir.

DIRECT EXAMINATION

BY MR. EUWER:

Q. Mr. Herzog, directing your attention to Lots 829 and 830 in Square 55, known as 820-822 Twenty-second Street,

Northwest, for what purpose is that used? A. It is used for the parking of vehicles.

Q. When was it first so used for that purpose? A. It was first used on June 1, 1953.

Q. Has it been used continuously since that time? A. It has been.

Q. For that purpose? A. For that purpose.

Q. Is there any charge made for the use of those spaces by the individuals entitled to use them? A. No charge is made.

80 Q. What individuals use that space? A. There are seven spaces there that are used by department heads of the hospital.

Q. What is your description of department heads? A. The department head would be the superintendent of the hospital, the assistant superintendent, and the heads of three or four of the major services, such as surgery, obstetrics, laboratory and anesthesiology.

MR. EUWER: That is all.

CROSS EXAMINATION

BY MR. UPDEGRAFF:

Q. When were the two lots acquired by the university? A. They were acquired prior to June 1, 1953.

Q. Did the lot have a building on it prior to being used as a parking lot? A. They did.

Q. Were they or were they not rental property? A. They were rented.

• • • • •

88 STEPHEN D. VERMILLION was called as a witness on behalf of the respondent and, having been first duly sworn, was examined and testified as follows:

THE COURT: Does this relate to all the cases?

MR. UPDEGRAFF: Yes, sir.

DIRECT EXAMINATION

BY MR. UPDEGRAFF:

Q. Will you state your name and occupation, please?
 A. Stephen D. Vermillion, field man in the District Assessor's office.

* * * * *

BY MR. UPDEGRAFF:

Q. Did you, at my request, inspect various public parking lots in the vicinity of Twenty-Fourth and E Streets, that is, in the area where George Washington University
 89 is located? A. Yes, sir; I did.

Q. You were requested to inspect the lots and ascertain the number of cars that could be parked in each lot? A. I was.

Q. And the square foot area? A. Yes, sir.

Q. And the rates charged. A. Yes, sir.

Q. Will you please take each location, give the location, the lot, the number of cars that can be parked and the square foot area, as well as the rates? A. Well, now, 500 Twenty-Fifth Street, Northwest.

* * * * *

100

CROSS EXAMINATION

BY MR. EUWER:

102

Q. Do you know how far distant the parking lots you examined were from the central area of the George Washington University? A. What would you call central area of George Washington University? Twenty-First and G Street?

Q. Yes. Let's take Twenty-First and G Street. A. Well, I would say a radius of from one block to seven blocks.

* * * * *

107 CLIFFORD COSGROVE was called as a witness on behalf of the petitioner and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EUWER:

Q. Will you give your name and address to the reporter, Mr. Cosgrove?

• • • • •

Q. Are you employed by the petitioner, the George
108 Washington University? A. Yes.

Q. In what capacity are you so employed? A. Business manager.

• • • • •

A. Yes, sir.

Q. For what purpose is that property used by the university? A. Storage.

Q. Do you know when it was first so used by the university?

• • • • •

A. Yes; I do. It was last June 22nd.

• • • • •

109 CROSS EXAMINATION

BY MR. UPDEGRAFF:

Q. Mr. Cosgrove, was this property used for rental purposes before it was used for storage purposes at the university? A. Yes; it was.

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123 STERLING HALL was called as a witness on behalf of the respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. UPDEGRAFF:

Q. Will you please state your name, address and occupation? A. Sterling Hall, 3203 South Ninth Street, Arlington, Virginia; administrative assistant to the assessor of the District of Columbia.

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127 Q. Now, Mr. Hall, from your personal knowledge, is it true or not that the District of Columbia Government has exempted from taxation all parking lots where such parking lots have been used for parking vehicles owned and used by the university itself? A. Yes.

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FILED APR 29 1954

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FINDINGS OF FACT AND OPINION

The above entitled proceedings were filed by the same taxpayer. In all of them is involved the matter of real estate taxes. The issue in all of them except three, is whether certain pieces of real property belonging to the petitioner were grounds belonging to, and reasonably required and actually used for the carrying on of the activities and purposes of the petitioner within the meaning of Section 1(r) (1) of the Act of December 24, 1942, (Section 47-801a (r) (1), D. C. Code 1951 Ed). In three of the proceedings the issue is whether the pieces of real property therein involved were buildings belonging to, and operated by the petitioner within the meaning of Section 1(j) of the Act of December 24, 1942 (Section 47-801a (j), D. C. Code, 1951 Ed).

FINDINGS OF FACT

In General

1. The petitioner is a corporation with its principal offices at 725-21st Street, Northwest, Washington, D. C. It was chartered by Congress on February 9, 1821, and is engaged in the operation of a university and, as an adjunct, a hospital. It is not organized or operated for private gain and embraces the general recognized relationship of teacher and student. Its principal facilities are located in downtown Washington in an area roughly bordered by Pennsylvania Avenue, 20th Street, F Street and 24th Street, Northwest. All of the foregoing [S/C]

155 2. As of July 1, 1953, and during the period since that date the petitioner had an enrollment of 10,000 students and a staff consisting of faculty and administrative personnel, in excess of 2,000. Approximately 60 per centum of the staff commute to the University in their automobiles. Many reside in nearby Maryland and Virginia.

3. The petitioner does not have any parking facilities in or along campus drives or like areas.

4. The universities of the same standing in Washington as the petitioner, that is to say, Georgetown University, Catholic University and American University, supply automobile parking privileges in spaces on their respective properties to faculty members and administrative staff and employees free of charge.

5. The matter of supplying parking facilities for automobiles belonging to the petitioner and the members of its staff and faculty presents a difficult problem which has not yet been solved by its officers. There is not enough parking space to fill such need, and those members for whom parking spaces are not provided have to "shift as best they can," and are continually bringing pressure to bear in order to get such privileges. Such persons park some distance away from the university, in some instances as far away as the Lincoln Memorial

6. All parcels of land used by the petitioner for parking its own automobiles, including those pertaining to its Athletic Department, have been exempted from taxation.

7. Section 14(a) of the District of Columbia Zoning Regulations provides in respect of parking spaces in "commercial" parking lots, that is said, those open to the public for hire, provides as follows: "For the purpose of this section, a parking space shall be an area not less than a hundred and fifty (150) square feet."

8. On July 1, 1953, there were the general vicinity of the petitioner university building and campus duly licensed commercial parking lots, with areas, authorized parking spaces (without consideration of, or subtraction for drive-ways ingress, and egress) rates; on February 22, 1954 with the number of parked cars there in as follows:

156 (a) *500 Twenty-fifth Street, Northwest*.—Area, 43,820 square feet. Authorized parking spaces, 279. Rates, \$6.00 a month or 35 cents all day. Parked cars, 250.

(b) *Corner of Twenty-fifth Street, E and F*.—Area, 34,240 square feet. Authorized parking spaces, 222¹

Rates, \$6.00 a month or 35 cents all day. Parked cars, 156.

(c) *2401 E Street, Northwest*.—Area, 9,719 square feet. Authorized parking spaces 65. Rates, \$7.00 a month, 25 cents for the first hour, 5 cents for each additional hour and 40 cents all day. Parked cars, (not given).

(d) *2012 E Street, Northwest*.—Area, 34,051 square feet. Authorized parking spaces 227. Rates, (not given). Parked cars, 255.

(e) *509 Twentieth Street, Northwest*.—Area, 9,150 square feet. Authorized parking spaces, 61. Rates, 30

¹ Witness for respondent who examined lot testified, without giving reason, that lot would not accommodate more than 175 automobiles.

cents for the first hour, 10 cents for each additional hour and 75 cents for all day. Parked cars, 60.

(f) *715 Twentieth Street, Northwest.*—Area, 11,069 square feet. Authorized parking spaces, 75. Rates, 35 cents for the first hour, and \$1.00 for all day. Parked cars, 74.

(g) *1727 and 1737 Pennsylvania Avenue, or the rear of 1712 H Street, Northwest.*—Area, 21,351 square feet. Authorized parking spaces, 142. Rates, 40 cents the first hour, 20 cents for each additional hour, 50 cents from six p.m. to twelve midnight and \$1.50 for all day. Parked cars, 165.

(h) *725 Seventeenth Street, Northwest.*—Area 28,186 square feet. Authorized parking spaces, 187. Rates, 40 cents for the first hour, 20 cents for each additional hour, and \$1.40 for all day. Parked cars, 165.

(i) *1724 G Street, Northwest.*—Area, 5,960 square feet. Authorized parking spaces, 40. Rates, 35 cents for the first hour and 15 cents for each additional hour, and \$1.00 for all day. Parked cars, 70.¹

(j) *1736 Eye Street, Northwest.*—Area, 3,814 square feet. Authorized parking spaces, 26. Rates, 40 cents for the first hour and 25 cents for each additional hour. Parked cars, 20.

(k) *1715 and 1717 Eye Street, Northwest.*—Area, 10,255 square feet. Authorized parking spaces, 68. Rates, 40 cents for the first hour and 20 cents for each additional hour and \$1.80 for all day. Cars parked, 55.

(l) *1725 Eye Street, Northwest.*—Area, 4,425 square feet. Authorized parking spaces, 30. Rates, 35 cents for the first hour, 20 cents for each additional hour and \$1.25 for all day. Cars parked, 25.

9. On February 22, 1954, an employee of, and witness for

¹ The operator of the parking lot was using an alley to park the overflow on February 22, 1954, when visited by the respondent's witness.

the respondent visited the following unlicensed parking lots, whose areas, lawfully permissable parking spaces, rates and car parking were as follows:

(a) *2200 C Street, Northwest.*—Area, 92,000 square feet. Lawfully permissable parking spaces 61. Rates, 35 cents for the first hour, 10 cents for each additional hour and 70 cents for all day. Cars parked, approximately 82.

(b) *Rear of 537 and 539 Twenty-first Street, Northwest.*—Area, 11,202 square feet. Lawfully permissable parking spaces, 75. Rates, \$13.00 a month, 30 cents for the first hour and 10 cents for each additional hour and 70 cents for all day. Cars parked, 76.

10. Parking restrictions established by the appropriate official of the respondent on the streets traversing and surrounding the area in which the buildings of the petitioner's university and hospital are located. On July 1, 1953, were, and still are as follows:

(a) *E Street, Northwest.*

From 19th Street to Virginia Avenue, on the north side, one-hour parking, 7 a.m. to 4 p.m.; the south side, one-hour parking, 7 a.m. to 6:30 p.m.

From Virginia Avenue, to 22nd Street, no parking on the north side, from 8 a.m. to 6 p.m.

158 From 23rd Street to Virginia Avenue, on the south side, no parking at any time.

(b) *F Street, Northwest.*

From New Hampshire Avenue west to end of roadway on both sides, two-hour parking, 8 a.m. to 6 p.m.

(c) *G Street, Northwest.*

From 24th Street to Virginia Avenue on the south side, and 10 feet east and 10 feet west of the driveway to the Washington Gas Light Company property yard, on the north side, no parking at any time.

From 25th Street to New Hampshire Avenue on both sides, two-hours parking from 7 a.m. to 6:30 p.m.

(d) *H Street, Northwest.* (None)

(e) *I Street, Northwest.*

From 20th Street to 21st Street on the south side, one-hour parking from 7 a.m. to 6:30 p.m.

From 20th Street to Pennsylvania Avenue on both sides, one-hour parking from 7 a.m. to 6:30 p.m.

From 22nd to 23rd Street on both sides, one-hour parking 7 a.m. to 10 p.m.

(f) *Pennsylvania Avenue, Northwest.*

From Washington Circle to 17th Street, one-hour parking 9:30 a.m. to 6:30 p.m., on the south side; one-hour parking 7 a.m. to 4 p.m. on the north side, except from the first alley east of 18th Street, west a distance of 83 feet, parking limited to 20 minutes from 7 a.m. to 4 p.m.

From 24th to 26th Street, on the north side, from 24th to 25th Street, on the south side, one-hour parking from 7 a.m. to 6:30 p.m.

(g) *Nineteenth Street, Northwest.*

From Virginia Avenue, to Pennsylvania Avenue, on the west side, no parking at any time.

From Virginia Avenue to E Street (south side of Rawlins Square) no parking from 7 to 9:30 a.m. and 4 to 6:30 p.m. one-hour parking from 9:30 a.m. to 4 p.m.

(h) *Twentieth Street, Northwest.*

From New Hampshire Avenue, on the west side, no parking at any time, except on Sundays, between F and H Streets, parking shall be permitted between the hours of 8:30 a.m. to 1 p.m. and between 6 and 9:30 p.m. On the east side no parking from 4 to 6:30 p.m.

(i) *Twenty-first Street, Northwest.*

From E Street to Virginia Avenue, no parking on east side from 8 a.m. to 6 p.m.

From P Street to Virginia Avenue, no parking on west side from 7 a.m. to 6:30 p.m.

From K Street to Pennsylvania Avenue, no parking on the east side from 7 to 9:30 a.m. and from 4 to 6:30 p.m.

(j) *Twenty-second Street, Northwest.*

From Virginia Avenue to H Street, on the west side, no parking from 7 to 9:30 a.m. and 4 to 6:30 p.m.

From H Street to Pennsylvania Avenue, on the east side, one-hour parking from 9:30 a.m. to 4 p.m. and 6:30 to 10 p.m., one-hour parking from 7 to 9:30 a.m. and 4 to 6:30 p.m.

(k) *Twenty-third Street, Northwest.*

From C Street to Washington Circle, no parking from 7 to 9:30 a.m. and 4 to 6:30 p.m., on either side; and in addition, from Eye Street to Washington Circle, one-hour parking from 9:30 a.m. to 4 p.m. and 6:30 to 10 p.m.

(l) *Zone 2, General Restrictions.*

Zone 2 of the "Conjuncted District" of Washington included the area bounded by the east curb of Seventeenth Street from G to F Street, and south curb of F Street from Seventeenth to Twentieth Street, and the west curb of Twentieth Street from F to N Street, the north curb of N Street from Twentieth to Fourteenth Street, and the west curb of Fourteenth Street from N to L Streets.

159 With respect of Zone 2 as above delineated, except as restricted in the preceding sub-paragraphs (a) to (k) inclusive hereof, parking of automobiles and trucks was limited to two hours from 7 a.m., to 6:30 p.m.

11. In the immediate vicinity of the petitioner's campus there are many apartments, churches and church edifices. In the general vicinity of such campus there are several government departmental buildings. Such general vicinity is heavily congested with automotive traffic.

12. Lots and parcels of land which on July 1, 1953, were, and still are owned by the petitioner, are as represented by the darkened areas in the squares appearing on Figure I, appended after these Findings of Fact.

DOCKET NO. 1401

1. On July 1, 1953, and for some time prior thereto the petitioner was, and still is the owner of an area of ground consisting of Lots numbered 20, 24, 25, 29, 823, 828, 830, 831, 832, 833 and 834, in Square numbered 56 in Washington, D. C., and bounded by G, H, 22nd and 23rd Streets, Northwest in that City and District. On that date, and for some time prior thereto, such area was, and still is being used by the petitioner as an automobile parking lot for members of the petitioner's faculty without charge. It contains approximately 150 parking spaces. No charge has been made for such parking privileges, and no income in respect of such area is derived from any other source.

2. The selection of members of the faculty for parking privileges is made on the basis of academic rank, that is to say, such privileges are issued first to all full professors, then to associate professors. No parking privileges are issued to assistant professors and instructors. There are not enough parking spaces available to permit privileges for all members of the faculty. The spaces are used on a "First come, first served" basis. The spaces are used by several persons each day. If a member of the faculty comes to the parking lot in the morning and leaves early, someone else uses the space later in the day. Unless the privileged member of the faculty arrives at the parking lot early in the morning he does not get to use a parking space. There is not enough space to accommodate all of the privileged class of the members of the faculty.

160 3. The area of land here involved on July 1, 1953, was, and still is reasonably required and actually

used for the carrying on of the activities and purpose of the petitioner.

4. The Assessor assessed a real estate tax against the above mentioned lots for the fiscal year ending June 30, 1954, in the total sum of One Thousand, Two Hundred and Five Dollars and Forty-eight cents (\$1,205.48).

DOCKET NO. 1402

1. On July 1, 1953, and for some time prior thereto, the petitioner was, and still is the owner of Lot numbered 811 in Square numbered 77, Washington, D. C., being premises 2137 and 2139 H Street, Northwest therein. On that date, and for some time prior thereto such lot was, and still is being used by the petitioner as an automobile parking lot without charge for members of the faculty engaged in research work, all of whom take part in research under a contract between the Quartermaster Corps of the Army and the petitioner, and none of whom, with the exception of one member, Professor Van Evera, does any teaching.

2. The lot involved contains seven parking spaces.

3. The members of the research staff are paid a salary by the petitioner. The contract with the Quartermaster Corps provides that there is to be no profit to the petitioner. It is to receive from the Government merely the cost of the research project to it.

4. No charge is made by the petitioner for the use of the seven parking spaces on said lot.

5. The project of research is undertaken by petitioner as a contribution by the petitioner as an educational institution to the development of research for the benefit of the Government. The work of the research group and that of the other members of the faculty in the particular field is coordinated.

6. The lot of ground here involved on July 1, 1953, was, and still is reasonably required and actually used for the carrying on of the activities and purposes of the petitioner.

7. The Assessor assessed a real estate tax against
161 the above described lot for the fiscal year ending
June 30, 1954, in the amount of One Hundred and
Forty-five Dollars and Eighty-eight cents (\$145.88).

DOCKET NO. 1403

1. On July 1, 1953, and for some time prior thereto the petitioner was, and still is the owner of Lot numbered 830 in Square numbered 101, Washington, D. C. On that date and some time prior thereto the said lot was and still is being used by the petitioner as an automobile parking lot for the administrative employees of the petitioner without charge.

2. The lot involved contains thirteen parking spaces.

3. The lot involved adjoins a building in which are employed the members of the administrative staff using the lot.

4. The lot involved originally had on it a building which was rented to a tenant, and which was razed in the early part of the Spring of 1953.

5. The lot of ground here involved on July 1, 1953, was and still is reasonably required and actually used for the carrying on of the activities and purposes of the petitioner.

6. The Assessor assessed a real estate tax against the above described lot for the fiscal year ending June 30, 1954, in the amount of \$245.16.

DOCKET NO. 1404

1. On July 1, 1953, and for some time prior thereto the petitioner was, and still is the owner of Lots numbered 829 and 830 in Square numbered 55, known as premises 820-822 Twenty-second Street, Northwest, Washington, D. C. On that date and for some time prior thereto the two lots were, and still are being used by the petitioner as an automobile parking lot for the heads of the departments of the hospital conducted by it in Washington, D. C. No charge is made for such parking privileges.

2. The lots involved contain seven parking spaces.

3. The lots were first used as a parking lot on June 1, 1953. Prior to that time there were buildings thereon which were rented.

162 4. The persons using the parking lot are the Superintendent and Assistant Superintendent of the Hospital, and heads of the following services: surgery, obstetrics, laboratory and anesthesiology.

5. The two lots of ground here involved on July 1, 1953, were and still are reasonably required and actually used for the carrying on of the activities and purposes of the petitioner.

6. The Assessor assessed a real estate tax against the above described real estate for the fiscal year ending June 30, 1954, in the amount of \$152.12.

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OPINION

The real property here involved may be classified for the purpose of determining the issues here involved into four categories, namely, (1) that used by the petitioner as parking lots, (2) that used as a military drill ground, (3) that used for storage purposes, and (4) that used in a manner in which the respondent now concedes entitles it to exemption. The tax liability of such real estate will be discussed and considered under those headings.

Before doing so the Court should state that it approaches the consideration of the questions present in the light of the well known principle of the law of taxation that exemptions from taxation are to be strictly construed. They are never presumed or extended by implication. He who claims exemption must clearly show that he is entitled to it. *Ford v. Delta and Pine Land Co.*, 164 U. S. 662, 41 L. Ed. 590; *Chicago Theological Seminary v. Illinois*, 188 U. S. 662, 47 L. Ed. 641; *Hebrew Home for the Aged v. District of Columbia*, 79 U. S. App. D. C., 64, 142 F. 2d 573; *Combined Congregations of the District of Columbia v. Dent*, 75 U. S.

App. D. C. 254, 140 F. 2d. 9; *Washington Chapter etc. v. District of Columbia*, ———, U. S. Appl. D. C. ———; 203 F. 2d. 68. At the same time the Court must keep in mind the plain directive in the Act of December 24, 1942, "That the real property exempt from taxation in the District of Columbia shall be the following and none other;

"SECTION 1(i) Hospital buildings, belonging to and operated by organizations which are not organized or operated for private gain, including buildings and structures reasonably necessary and usual to the operation of a hospital.

"(j) Buildings belonging to and operated by schools, colleges, or universities which are not operated for private gain, and which embrace the generally recognized relationship of teacher and student.

"(r)(1) Grounds belonging to and reasonably required and actually used for the carrying on of the activities and purposes of any institution or organization entitled to exemption under the provision of this Act." (Section 47-801a (i), (j) and (r)(1), D. C. Code, 1951 Ed.)

PARKING LOTS

Docket Nos. 1401, 1402, 1403 and 1404

Docket No. 1401, involves a group of eleven lots in Square 56 used on the tax day (July 1, 1953) and since then as a parking lot for the members of the petitioner's faculty in the higher echelons. The parking lot is not of sufficient area to supply even all in that class of members 166 of the faculty, and those who arrive late must find other parking accommodations. No charge is made for such privileges.

Docket No. 1403 involves thirteen parking spaces on Lot 803 in Square 101 used by petitioner as parking facilities for

its administrative employees, and adjoining a building in which such employees perform their duties. No charge is made for such privileges.

Docket No. 1404 involves two lots, 820 and 830 in Square 55 used as a parking lot for the heads of the departments of the petitioner's hospital. The lots contain seven parking spaces for which no charge is made. In respect of the three above mentioned parking lots the Court is of the opinion that land upon which they are operated exempt from real estate taxation for the fiscal year involved. The Court has found that they belong to the petitioner and is reasonably required and actually used for the carrying on of the activities and purposes of the petitioner. In a series of cases between the same parties, *Docket Nos. 1345, to 1352, inclusive*, decided March 17, 1953, and in which were involved questions identical to those here under consideration, this Court observed:

"The petitioner uses the above described property as an automobile parking lot for members of its faculty and attending physicians at its hospital. It contains 220 parking spaces which does not fill the need therefor by such restricted class of users. The Court has found as a fact, that on July 1, 1952 the maintenance of such parking lot by the petitioner was, and is reasonably required for the carrying on of the activities of the petitioner's university and hospital. There is no charge made for its use.

"There is no question about the petitioner being a university within the meaning of Section 1(j) of the Act of December 24, 1942 (47-801a(j), D. C. Code, 1951 Ed.) nor is there any contention or claim by the respondent that its hospital is not a hospital within the meaning of Section 1(i) of the Act. What is here in issue is whether the land involved

herein can be said to be "grounds belonging to and reasonably required and actually used for the carrying on of the activities and purposes" of the petitioner and its hospital, within the meaning of Section 1(r)(1) of the Act.

"As has been often said, while it is a simple and sometimes easy matter to determine a principle of law or conduct, its application is frequently difficult, especially under changing conditions. What was undoubtedly *not* necessary several years ago to the maintenance and operation of an institution such as the petitioner, may at this time and age be reasonably required for the carrying on of its activities. In a comparatively recent case, *Cedars of Lebanon Hospital v. Los Angeles County*, 35 Cal. 2d 729, 221 P2d 31, 15 A. L. R. 2d 1045, the Supreme Court of California gave expression to that thought in the language following:

"In determining what constitutes 'property used exclusively for * * * hospital * * * purposes', it is appropriate first to note generally the nature of 'hospital.'

167 "A fair and unchallenged description of the nature of such an institution is set forth in plaintiff's combined brief as follows: 'A hospital is primarily a service organization. It serves three groups: the patients, its doctors, and the public. It furnishes a place where the patient, whether poor or rich, can be treated under ideal conditions. It makes available room, special diet, X-ray, laboratory, surgery, and a multitude of other services and equipment now available through the advances of medical science. Essential to the administration of these techniques is the

corps of highly-trained nurses and student nurses who are on duty twenty-four hours per day. In the large hospitals there are the interns and residents whose presence make it possible for the hospital to do a better job. In addition, the hospital * * * must have administration to see that its services function properly and are coordinated, and that patients are received and cared for regardless of the hour or the patient's condition. Nothing can be left to chance because a slip may mean a life or many lives. These facilities also stand ready to serve the community in times of epidemic or disaster.'

"This description expresses in general terms the nature, functions, and purposes of a complete, modern hospital plant, which functions and purposes are more fully and more specifically alleged in the complaints on file herein and are admitted by the demurrers thereto. And as the constitutional amendment and statute under consideration were adopted and enacted in 1944 and 1945, respectively, it is entirely clear that the people and the legislature had in mind such a complete, modern hospital plant rather than one consisting only of the minimum and indispensable facilities found in earlier hospitals which inadequately served their purposes many years ago."

"In this automobile age parking facilities have come to be regarded in respect of many businesses and activities as essential. Indeed, in many localities today legislation has been adopted which provides that construction of apartment buildings, theatres, stores, shopping centers and the like shall

not be permitted until the owner has made provision for adequate parking facilities determined by a formula with factors related to the number of persons to be served by such structures.

"This discussion is intended to relate to the issues raised in Docket Nos. 1350, 1351, and 1352, involving land used by the petitioner as automobile parking lots for staff and attending physicians of the hospital, professors and staff employees of the university and students, with which cases this proceeding has been consolidated, and what is said here, as far as pertinent, speaking, of course, the use of the automobile for transportation by teachers and students is not included in the term "education", but neither are sleeping and eating (except to such a slight degree that it can be ignored). Dormitories and dining halls, with the rarest exception, have always been regarded as essential facilities of schools, colleges and universities, and the space of ground occupied by such structures and the buildings themselves, have received at the hands of the legislatures and the courts the same favored treatment as that accorded land and buildings devoted exclusively to teaching in the narrow sense. There have been, it is true, some decisions which deny exemptions to such property, but they are against the vast majority of cases on that subject. And the fact that the teacher and the student might find eating and sleeping accommodations elsewhere in the vicinity, does not deprive dormitories and refectories of schools, colleges and universities of exemption. Nor is such right to exemption destroyed by the fact that a charge is made by the institution for such accommodations. It is difficult, if not impossible, to see any material difference between supplying teachers and students with such accommodations and supplying auto-

mobile parking facilities under the circumstances relating to the congested traffic conditions surrounding the petitioner's university buildings concerning the great need for such parking facilities."

- 168 "The Court realizes, of course, that the question here to be answered is novel. A search of authorities, text books and State tax services has revealed no case dealing with the matter of the exemption of automobile parking lots owned and operated by schools or by other semi-public institutions, except a case which was decided by this Court (then the Board of Tax Appeals) in *National Catholic Welfare Conference v. District of Columbia*, Docket No. 1000, which held under Section 1(r)(1) of the Act of December 24, 1942 (47-801a, D. C. Code, 1951 Ed.) a lot of land belonging to National Catholic Welfare Conference (whose other land was exempt) was exempt for real estate taxation under facts found in that proceeding as follows:

"13. Lot 87 was a vacant lot in the real [r] of 1314 Massachusetts Avenue. It is used in part for the delivery of material in and out of 1312 Massachusetts Avenue. In addition, there was room for parking space for 15 or 20 automobiles, and it was used for that purpose for various members of the personnel of petitioner, or the subsidiary organizations. It was not open to the public. The charge made was \$2.00 per month per car, which was less than charges made by commercial parking-lot operators, and did not aggregate an amount equal to the cost of maintaining the parking spaces. Such use of the property was necessitated by the fact that parking on the street upon which

not be permitted until the owner has made provision for adequate parking facilities determined by a formula with factors related to the number of persons to be served by such structures.

"This discussion is intended to relate to the issues raised in Docket Nos. 1350, 1351, and 1352, involving land used by the petitioner as automobile parking lots for staff and attending physicians of the hospital, professors and staff employees of the university and students, with which cases this proceeding has been consolidated, and what is said here, as far as pertinent, speaking, of course, the use of the automobile for transportation by teachers and students is not included in the term "education", but neither are sleeping and eating (except to such a slight degree that it can be ignored). Dormitories and dining halls, with the rarest exception, have always been regarded as essential facilities of schools, colleges and universities, and the space of ground occupied by such structures and the buildings themselves, have received at the hands of the legislatures and the courts the same favored treatment as that accorded land and buildings devoted exclusively to teaching in the narrow sense. There have been, it is true, some decisions which deny exemptions to such property, but they are against the vast majority of cases on that subject. And the fact that the teacher and the student might find eating and sleeping accommodations elsewhere in the vicinity, does not deprive dormitories and refectories of schools, colleges and universities of exemption. Nor is such right to exemption destroyed by the fact that a charge is made by the institution for such accommodations. It is difficult, if not impossible, to see any material difference between supplying teachers and students with such accommodations and supplying auto-

mobile parking facilities under the circumstances relating to the congested traffic conditions surrounding the petitioner's university buildings concerning the great need for such parking facilities."

- 168 "The Court realizes, of course, that the question here to be answered is novel. A search of authorities, text books and State tax services has revealed no case dealing with the matter of the exemption of automobile parking lots owned and operated by schools or by other semi-public institutions, except a case which was decided by this Court (then the Board of Tax Appeals) in *National Catholic Welfare Conference v. District of Columbia*, Docket No. 1000, which held under Section 1(r)(1) of the Act of December 24, 1942 (47-801a, D. C. Code, 1951 Ed.) a lot of land belonging to National Catholic Welfare Conference (whose other land was exempt) was exempt for real estate taxation under facts found in that proceeding as follows:

"13. Lot 87 was a vacant lot in the real [r] of 1314 Massachusetts Avenue. It is used in part for the delivery of material in and out of 1312 Massachusetts Avenue. In addition, there was room for parking space for 15 or 20 automobiles, and it was used for that purpose for various members of the personnel of petitioner, or the subsidiary organizations. It was not open to the public. The charge made was \$2.00 per month per car, which was less than charges made by commercial parking-lot operators, and did not aggregate an amount equal to the cost of maintaining the parking spaces. Such use of the property was necessitated by the fact that parking on the street upon which

1312 Massachusetts Avenue faces was prohibited."

"During the hearing it was developed that the parking facilities involved in this particular proceeding were used by staff physicians at the hospital (who teach medicine there) and by physicians who attend patients therein. The Court found as a fact that such parking facilities were reasonably required for the carrying on of the activities of the hospital."

Docket No. 1402 involves seven parking spaces on Lot 811 in Square 77 used by the petitioner to supply parking facilities without charge to members of its faculty engaged in research work under the contract between the Quartermasters Corps of the Army and the petitioner, none of whom, with the exception of one member, does any teaching. Salaries of such members are paid by the petitioner. No profit is derived by the petitioner from such project.

While it is true that the project involved has no *direct* relation to the student, it does have some *indirect* connection with, and benefit to him. Moreover, such undertakings have in recent years become very common with colleges and universities. It was in such that the science of atomic and thermo-nuclear energies were brought to flower and fruition. Certainly it tends to the advancement of science. The Court believe that such project is within the presently accepted sphere of activities of a university. The Court has found that the property involved is reasonably required and actually used for the carrying on of the activities and purposes of the petitioner and holds that like the other parking lots involved this particular one is exempt from real estate taxation.

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IN GENERAL

For the reasons stated above the Court here rules as follows:

(1) That a real estate tax for fiscal year ending
170 June 30, 1954 in the amount of One Thousand Two
Hundred and Five Dollars and Forty-eight cents
(\$1,205.48) assessed against Lots 20, 24, 25, 29, 823, 828,
830, 831, 832, 833, and 834 in Square 56, Washington, D. C.
was invalidly assessed, and is hereby cancelled.

(2) That a real estate tax for the fiscal year ending
June 30, 1954, in the amount of One Hundred and Forty-
five Dollars and Eighty-eight cents (\$145.88) assessed
against Lot 811 in Square 77, Washington, D. C., was in-
validly assessed, and is hereby cancelled.

(3) That a real estate tax for the fiscal year ending
June 30, 1954, in the amount of Two Hundred and Forty-five
Dollars and Sixteen cents (\$245.16), was assessed against
Lot 830 in Square 101, Washington, D. C. was invalidly
assessed, and is hereby cancelled.

(4) That a real estate tax for the fiscal year ending
June 30, 1954, in the amount of One Hundred and Fifty-two
Dollars and Twelve cents (\$152.12) assessed against Lots
829 and 830 in Square 55, Washington, D. C., was invalidly
assessed, and is hereby cancelled.

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*Decisions in the above mentioned proceedings will be
entered for the petitioner.*

/s/ Jo V. MORGAN, Judge

171

Filed Apr 29 1954

DECISION

This proceeding came on to be heard upon the petition
filed herein; and upon consideration thereof and of the

evidence adduced at the hearing on said petition, it is by the Court this 29th day of April, 1954

ADJUDGED AND DETERMINED, That a real estate tax for the fiscal year ending June 30, 1954, in the amount of One Thousand Two Hundred and Five Dollars and Forty-eight cents (\$1,205.48) assessed against Lots 20, 24, 25, 29, 823, 828, 830, 831, 832, 833, and 834, in Square 56, Washington, D. C., was invalidly assessed, and is hereby cancelled.

• • • • •

172

Filed May 4, 1954

STIPULATION

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that petitioner's name was originally "The Columbian College in the District of Columbia" (Act of February 9, 1821, 6 Stat. 255); that its name was later changed to "Columbia University" (Act of March 3, 1873, 17 Stat. 629): and that, by authority of an Act of January 23, 1904, 33 Stat. 8, its name was subsequently changed in 1904 by proper certificate, duly approved by the then Secretary of the Interior of the United States of America, to "The George Washington University".

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181

Docket No. 1402

DOCKET

Date	Proceedings	Memorandum
1953		
Nov 13	Pet. filed. TP., notified, A. A. & C. C., served.	R. E. \$145.88— 1954
1954		
Jan 5	Hearing set for Jan 25. TP., CC., & AA served.	

Jan 20 Pet's Mot. for continuance—Granted to Feb. 17.
 All parties served.
 Feb 15 Resp. mot for cont—Granted to Feb 19 All
 parties served.
 Feb 19 Resp. mot for cont—Granted to Mar 1 all parties
 served.
 Mar 1 Hearing—Updegraff for District.
 Mar 10 Resp mot for further hearing—granted set for
 Mar 19 all parties served.
 Apr 5 Memorandum brief filed by petitioner.
 Apr 16 Respondent's brief.
 Apr 29 Findings of Fact, Opinion and Decision.
 May 4 Stipulation.
 May 21 Pet. for Review, Statement of Points, Designa-
 tion of Record.
 May 28 Counter-Designation of Additional Portions of
 Record on Petition for Review.

182 DISTRICT OF COLUMBIA TAX COURT

THE GEORGE WASHINGTON UNIVERSITY, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

Filed Nov 13 1953

Docket No. 1402

PETITION

The above named Petitioner appeals from assessment of taxes against it and avers as follows:

1. Petitioner is a corporation with its principal offices at 725 21st Street, N. W., Washington 6, D. C.
2. The taxes in controversy are real property taxes for the 1954 fiscal year in the amount of One Hundred Forty-

five Dollars and Eighty-eight Cents (\$145.88). The statement of taxes due was dated on or about September 1, 1953, as will appear from a copy thereof attached hereto as Exhibit "A". No tax was paid nor was such tax required to be paid by Petitioner by virtue of the provisions of Section 47-801(e) of the Code of Laws of the District of Columbia. The real property, which is the subject of the tax, is located within the District of Columbia and is known as Lot Eight Hundred Eleven (811) in Square Seventy-seven (77).

3. The assessment of taxes is based upon the following error:

The Commissioners of the District of Columbia erred in holding that the real property was not exempt under pertinent provisions of the District of Columbia Code.

4. The facts upon which Petitioner relies as the basis of this proceeding are as follows:

183 a. Petitioner is a corporation chartered by Congress February 9, 1821, and is engaged in the operation of a university, with its principal facilities located in downtown Washington in the District of Columbia, bordered roughly by Pennsylvania Avenue, N. W., 20th Street, N. W., F Street, N. W., and 24th Street, N. W.

 b. Petitioner has an enrollment of ten thousand (10,000) students and a staff in excess of two thousand (2,000) individuals, a large number of whom commute to and from the University in private automobiles.

 c. Parking facilities in the area of the University on public highways and parking areas open to the public are so limited as to afford only a very small number of spaces available to said student and staff automobile commuters to and from the University.

d. Petitioner does not own campus drives or other areas where commuting students and staff members may find appropriate parking facilities.

e. Petitioner operates assessed area, Lot 811 in Square 77, as an automobile parking lot for research officials of Petitioner without charge and said parking area is not used to secure any income for any other activity or purpose.

WHEREFORE, Petitioner prays that this Court may hear the proceeding, and cancel the assessments against said real property and exempt Petitioner from the payment of real property taxes upon such real property.

* * * * *

185

Filed Apr 29 1954

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof and of the evidence adduced at the hearing on said petition. it is, by the Court, this 29th day of April, 1954

ADJUDGED AND DETERMINED, That a real estate tax for the fiscal year ending June 30, 1954, in the amount of One Hundred and Forty-five Dollars and Eighty-eight cents (\$145.88) assessed against Lot 811 in Square 77, Washington, D. C., was invalidly assessed, and is hereby cancelled.

* * * * *

194

Docket No. 1403

DOCKET

Date	Proceedings	Memorandum
1953		
Nov 13	Pet. filed. TP., notified. AA., and CC., served.	R. E. \$245.16— 1954

1954

Jan 5 Hearing set for Jan 25 TP., CC., & AA., served.

Jan 20 Pet's. Mot. for Continuance—granted to Feb. 17.

All parties served.

Feb 15 Resp mot for cont—Granted to Feb 19 all parties served.

Feb. 19 Resp mot for cont—Granted to Mar 1 all parties served.

Mar 1 Hearing—Updegraff for District.

Mar 10 Resp mot for further hearing—granted—set for Mar 19 all parties served.

Apr 5 Memorandum brief filed by petitioner.

Apr 16 Respondent's brief.

Apr 29 Findings of Fact, Opinion and Decision.

May 4 Stipulation.

May 21 Pet. for Review, Statement of Points, Designation of Record.

May 28 Counter-Designation of Additional Portions of Record on Petition for Review.

195 DISTRICT OF COLUMBIA TAX COURT

Docket No. 1403

THE GEORGE WASHINGTON UNIVERSITY, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

Filed Nov 13 1953

PETITION

The above named Petitioner appeals from assessment of taxes against it and avers as follows:

1. Petitioner is a corporation with its principal offices at 725 21st Street, N. W., Washington 6, D. C.

2. The taxes in controversy are real property taxes for the 1954 fiscal year in the amount of Two Hundred Forty-

five Dollars and Sixteen Cents (\$245.16). The statement of taxes due was dated on or about September 1, 1953, as will appear from a copy thereof attached hereto as Exhibit "A". No tax was paid nor was such tax required to be paid by Petitioner by virtue of the provisions of Section 47-801(e) of the Code of Laws of the District of Columbia. The real property, which is the subject of the tax, is located within the District of Columbia and is known as Lot Eight Hundred Thirty (830) in Square One Hundred One (101).

3. The assessment of taxes is based upon the following error:

The Commissioners of the District of Columbia erred in holding that the real property was not exempt under pertinent provisions of the District of Columbia Code.

4. The facts upon which Petitioner relies as the basis of this proceeding are as follows:

a. Petitioner is a corporation chartered by Congress February 9, 1821, and is engaged in
196 the operation of a university, with its principal facilities located in downtown Washington, in the District of Columbia, bordered roughly by Pennsylvania Avenue, N. W., 20th Street, N. W., F Street, N. W., and 24th Street, N. W.

b. Petitioner has an enrollment of ten thousand (10,000) students and a staff in excess of two thousand (2,000) individuals, a large number of whom commute to and from the University in private automobiles.

c. Parking facilities in the area of the University on public highways and parking areas open to the public are so limited as to afford only a very small number of spaces available to said student and staff automobile commuters to and from the University.

d. Petitioner does not own campus drives or other areas where commuting students and staff members may find appropriate parking facilities.

e. Petitioner operates assessed area, Lot 830 in Square 101, as an automobile parking lot for administrative employees of Petitioner without charge and said parking area is not used to secure any income for any other activity or purpose.

WHEREFORE, Petitioner prays that this Court may hear the proceeding, and cancel the assessments against said real property and exempt Petitioner from the payment of real property taxes upon such real property.

198

Filed Apr 29 1954

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing on said petition, it is, by the Court, this 29th day of April, 1954,

ADJUDGED AND DETERMINED, That a real estate tax for the fiscal year ending June 30, 1954, in the amount of Two Hundred and Forty-five Dollars and Sixteen cents (\$245.16), was assessed against Lot 830 in square 101, Washington, D. C., was invalidly assessed, and is hereby cancelled.

207

Docket No. 1404

DOCKET

Date	Proceedings	Memorandum
1953		
Nov 13	Pet. filed. TP., notified. AA., & CC., served.	R. E. \$152.15— 1954

1954

Jan 5 Hearing set for Jan 25. TP., CC., & AA., served.

Jan 20 Pet's. Mot. for continuance—granted to Feb. 17.

All parties served.

Feb 15 Resp mot for cont—Granted to Feb 19 All parties served.

Feb 19 Resp mot for cont—Granted to Mar 1 all parties served.

Mar 1 Hearing—Updegraff for District.

Mar 10 Resp mot for further hearing—granted—set for Mar 19 all parties served.

Apr 5 Memorandum brief filed by petitioner.

Apr 16 Respondent's brief.

Apr 29 Findings of Fact, Opinion and Decision.

May 4 Stipulation.

May 21 Pet. for Review, Statement of Points, Designation of Record.

May 28 Counter-Designation of Additional Portions of Record on Petition for Review.

208 DISTRICT OF COLUMBIA TAX COURT

Docket No. 1404

THE GEORGE WASHINGTON UNIVERSITY, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

Filed Nov 13 1953

PETITION

The above named Petitioner appeals from assessment of taxes against it and avers as follows:

1. Petitioner is a corporation with its principal offices at 725 21st Street, N. W., Washington, D. C.

2. The taxes in controversy are real property taxes for the 1954 fiscal year in the amount of One Hundred Fifty-two

Dollars and Twelve Cents (\$152.12). The statements of taxes due were dated on or about September 1, 1953, as will appear from copies thereof hereto attached as Exhibit "A". No tax was paid nor was such tax required to be paid by Petitioner by virtue of the provisions of Section 47-801(e) of the Code of Laws of the District of Columbia. The real property, which is the subject of the tax, is located within the District of Columbia and is known as Lots Eight Hundred Twenty-nine (829) and Eight Hundred Thirty (830) in Square Fifty-five (55).

3. The assessment of taxes is based upon the following error:

The Commissioners of the District of Columbia erred in holding that the real property was not exempt under pertinent provisions of the District of Columbia Code.

209 4. The facts upon which Petitioner relies as the basis of this proceeding are as follows:

a. Petitioner is a corporation chartered by Congress February 9, 1821, and is engaged in the operation of a university in the District of Columbia, and of a hospital at Washington Circle, N. W., and bordered roughly by I Street, N. W., 22nd and 23rd Streets, N. W., and Pennsylvania Avenue, N. W.

b. The assessed area, Lots 829 and 830 in Square 55, is located near the George Washington University Hospital and has been utilized solely as a parking lot for department heads of the said Hospital. No charge is made for said parking facilities and said parking area is not used to secure income for any other activity or purpose.

c. There are no other parking facilities, either private or public, within an area easily accessible to The George Washington University Hospital.

WHEREFORE, Petitioner prays that this Court may hear the proceeding, and cancel the assessments against said real property and exempt Petitioner from the payment of real property taxes upon such real property.

• • • • •

211

Filed Apr 29 1954

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing on said petition, it is, by the Court, this 29th day of April, 1954

ADJUDGED AND DETERMINED, That a real estate tax for the fiscal year ending June 30, 1954, in the amount of One Hundred and Fifty-two Dollars and Twelve cents (152.12) assessed against Lots 829 and 830 in Square 55, Washington, D. C., was invalidly assessed and is hereby cancelled.

/s/ Jo. V. MORGAN, *Judge*

BRIEF FOR PETITIONER

IN THE United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,290

DISTRICT OF COLUMBIA, Petitioner,

v.

THE GEORGE WASHINGTON UNIVERSITY, Respondent.

No. 12,291

DISTRICT OF COLUMBIA, Petitioner,

v.

THE GEORGE WASHINGTON UNIVERSITY, Respondent.

No. 12,292

DISTRICT OF COLUMBIA, Petitioner,

v.

THE GEORGE WASHINGTON UNIVERSITY, Respondent.

No. 12,293

DISTRICT OF COLUMBIA, Petitioner,

v.

THE GEORGE WASHINGTON UNIVERSITY, Respondent.

**On Petitions for Review of Decisions of the
District of Columbia Tax Court**

VERNON E. WEST,
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QUESTIONS PRESENTED

1. The principal question presented is whether grounds which are actually used by employees of a University for parking their automobiles entitles such grounds to tax exemption under a statutory provision which requires, as a prerequisite to tax exemption, that grounds must be reasonably required and actually used for carrying on the activities and purposes of the University which is entitled to exemption of its buildings under the provisions of the statute involved.

2. The remaining question presented is whether findings of fact and conclusions to the effect that certain grounds were used by the University are clearly erroneous and, therefore, invalid when there is nothing in the evidence to support such findings and conclusions.

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IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,290

No. 12,291

No. 12,292

No. 12,293

DISTRICT OF COLUMBIA, *Petitioner*,

v.

THE GEORGE WASHINGTON UNIVERSITY, *Respondent*.

BRIEF FOR PETITIONER

PRELIMINARY STATEMENT

On consideration of the joint motion of the parties, these cases were consolidated for the purposes of filing briefs, joint appendix and for oral argument by order of the Court entered July 9, 1954.

JURISDICTIONAL STATEMENT

The decisions of the District of Columbia Tax Court were entered April 29, 1954 (App. 37, 41, 44, 47). Petitions for review of said decisions were filed May 21, 1954 (App. 1, 39, 42, 45).

The jurisdiction of this Court is invoked under the provisions of Section 5 of the Act of December 24, 1942, 56 Stat. 1089, ch. 826 (Sec. 47-801e, D. C. Code 1951), and Sec. 4, Title IX, of the District of Columbia Revenue Act of 1937, as amended, 52 Stat. 371, ch. 223 (Sec. 47-2404, D. C. Code 1951).

STATEMENT OF THE CASE

The taxes here involved are real property taxes for the fiscal year ended June 30, 1954, assessed against respondent [hereinafter called "University"] with respect to 15 unimproved lots (App. 37). The University contended in the Tax Court that all lots involved were entitled to exemption from real property taxation under the statute involved, *infra*, as grounds belonging to and reasonably required and actually used for carrying on its activities and purposes (App. 19).

The University was incorporated by the Act of February 9, 1821, 6 Stat. 255 (App. 20, 38), its original name being "The Columbian College in the District of Columbia" (App. 38). The name of the University was changed to its present one in 1904 (App. 38, Stipulation). The Tax Court found as a fact, and petitioner [hereinafter called "District"] admits that the University is engaged in the operation of a university; that it is not organized or operated for private gain; and that it embraces the generally recognized relationship of teacher and student (App. 20, Finding 1). Consequently, the University's buildings, if not used to secure a rent or income for any activity other than that for which exemption is granted, are entitled to exemp-

tion from real property taxation.¹ There is no question in these cases, however, with respect to the exemption of the University's buildings.

The Tax Court did not make a finding of fact as to the "purposes" of the University. However, the University's purposes are clearly stated in the statute of incorporation (6 Stat. 255) whereby a college was created "for the sole and exclusive purpose of educating youth in the English, learned, and foreign languages, the liberal arts, sciences, and literature." This purpose has not been changed over the years.

The District has exempted from taxation all parcels of land used by the University as parking lots for parking vehicles owned and used by the University itself (App. 19, 21, Finding of Fact 6).

The property here involved, consisting entirely of "grounds" (15 unimproved lots), was actually used by individual persons rather than the University for parking their automobiles. Those persons were officers and employees of the University, consisting of members of the faculty, research personnel, administrative employees and department heads (App. 5, 11, 14, 15, 16, 26, 27, 28). There was an attempt by the witness Herzog (Treasurer of the University, App. 4), by an unresponsive answer to a question as to use of one lot, to show that one lot was used for the parking of vehicles in connection with the activities of the University. This testimony, however, was excluded upon objection by counsel for the District (App. 10, 11):

¹ Sec. 1(j) of the statute involved (Sec. 47-801a(j), D. C. Code 1951) exempts: "Buildings belonging to and operated by schools, colleges, or universities which are not organized or operated for private gain, and which embrace the generally recognized relationship of teacher and student." Sec. 2 of the statute (Sec. 47-801b, D. C. Code 1951) requires any portion of any building or grounds belonging to and actually used by any exempted organization which is used to secure a rent or income for any activity other than that for which exemption was granted to be "assessed and taxed".

"BY MR. EUWER:

"Q. Mr. Herzog, directing your attention to Lot Number 811 in Square 77, to what use is that lot put? A. This property is used for the parking of vehicles in connection with the activities of the University.

"Q. Who are entitled to use those lots for parking?

"MR. UPDEGRAFF: I do not understand the last answer, if Your Honor please.

"MR. EUWER: I asked him who used it.

"MR. UPDEGRAFF: That is what I understood. I object because I do not think the answer is responsive.

"THE COURT: It will be stricken out and the witness will answer the question. Let us get it straight. The question concerning which you made some objection was how is it being used.

"MR. EUWER: Lot Number 811, Square 77.

"THE COURT: The witness went further and gave a conclusion that it was used in these activities. There is objection to that portion by Mr. Updegraff, is that correct?

"MR. UPDEGRAFF: Yes, sir.

"THE COURT: Which relates to the activities of the University?

"MR. UPDEGRAFF: Yes, sir.

"THE COURT: That part will be stricken and the rest will stay in, namely, that it is being used for a parking lot. * * *

"THE COURT: By whom is it being used?

"THE WITNESS: By the University research individuals. * * *

"BY MR. EUWER:

"Q. What is their connection with the University, Mr. Herzog? A. These particular men are connected with a research contract that the University has with the Quartermaster Branch of the War Department."

The testimony as to all of the 15 lots involved clearly shows that none of them was used by the University for any pur-

pose whatsoever (App. 5, 11, 14, 15, 16). Notwithstanding this evidence and the fact that the Court had specifically excluded, upon objection, testimony not based upon facts but based upon a conclusion as to use of the property, the Tax Court made clearly erroneous findings in each case that the property was used "by the petitioner" [University] as indicated below. The italicized words appearing below after Docket No. 1401 to Docket No. 1404, inclusive, to the effect, in each case, that the property taxed was used as automobile parking lots by members of the faculty, research personnel, administrative employees, and department heads, find support in the evidence. However, the words in quotes "by the petitioner" and "for" in each case do not have any support in the evidence:

Docket No. 1401 (App. 26): On July 1, 1953 (the tax date), the several lots taxed were used "by the petitioner" as an automobile parking lot "for" [by] members of the University's faculty.

Docket No. 1402 (App. 27): On July 1, 1953 (the tax date), the lot taxed was used "by the petitioner" as an automobile parking lot "for" [by] members of the faculty engaged in research work.

Docket No. 1403 (App. 28): On July 1, 1953 (the tax date), the lot taxed was used "by the petitioner" as an automobile parking lot "for" [by] the administrative employees of the University.

Docket No. 1404 (App. 28): On July 1, 1953 (the tax date), the lots taxed were used "by the petitioner" as an automobile parking lot "for" [by] the heads of the departments of the hospital conducted by the University.

The Tax Court made certain findings of fact with respect to the number of students and personnel of the University, parking facilities in or along campus drives or like areas, the furnishing of parking privileges free of charge by other

universities, commercial parking facilities and parking restrictions, which are in no wise pertinent to the statutory requirement for exemption and, accordingly, are immaterial to the questions involved herein.

Although the Tax Court's governing statute² specifically requires the Court to "make separate findings of fact and conclusions of law," the Court made no separate conclusions of law.³ The Tax Court made findings of fact in each of the cases here involved that the land and grounds taxed on July 1, 1953, were "reasonably required and actually used for the carrying on of the activities and purposes" of the University (App. 26, Finding 3; App. 27, Finding 16; App. 28, Finding 5; App. 29, Finding 5). Upon these clearly erroneous findings, which incidentally are couched in the exact language of the exemption provision of the statute involved, the Tax Court ruled that the assessments were invalid and canceled such assessments (App. 37).

STATUTE INVOLVED

The only provision of law involved is Sec. 1(r)(1) of the Act of December 24, 1942, 56 Stat. 1089, ch. 826 (Sec. 47-801a(r)(1), D. C. Code, 1951), which exempts from real property taxation:

"Grounds belonging to and reasonably required and actually used for the carrying on of the activities and purposes of any institution or organization entitled to exemption under the provisions of this Act."

STATEMENT OF POINTS

1. The property involved was not entitled to exemption from taxation because it was not used by the owner thereof

² Act of May 16, 1938, 52 Stat. 370, c. 223 (Sec. 47-2403, D. C. Code 1951).

³ This is another case, like the cases of *District of Columbia v. Fleming*, No. 12162, and *District of Columbia v. Ghent*, No. 12199, now pending in this Court where the Tax Court has failed to comply with its governing statute.

or for any purposes for which exemption is granted by the statutory provision involved.

2. The conclusions contained in the findings of fact that the grounds involved were reasonably required and actually used for carrying on the activities and purposes of the University, if findings of fact, are clearly erroneous and, if conclusions of law, are likewise erroneous and contrary to the provisions of the exempting statute.

SUMMARY OF ARGUMENT

The statute involved designates the property favored by tax exemption and particularly prescribes the bases upon which the exemptions are to be determined. Some exemptions are based solely on ownership and others are based on ownership and use. The exemption provision here involved exempts "grounds" belonging to any institution whose buildings are entitled to exemption provided such grounds are "reasonably required" and "actually used" for carrying on the activities and purposes of such institution. The University's sole and exclusive purpose is the education of youth. The grounds in question were not used by the University for the education of youth or for any purpose whatsoever; such grounds were used solely by employees of the University for parking their automobiles.

There is no statutory provision exempting parking lots from taxation. Indeed, Congress has authorized the acquisition and operation of public parking lots on a basis requiring payment for their use and has provided that there shall be no discrimination in rates or privileges among the members of the public for the use of such facilities. Exemption from taxation of the parking lots here involved would be contrary to the parking lot and tax exemption laws and would create a discriminatory and unjust situation by favoring a small segment of the public at the expense of the remainder whose taxes would have to be increased to take care of such exemption.

There is no evidence to support the findings and conclusions of the Tax Court that the grounds involved were used by the University. An attempt to get into the record such erroneous conclusion was excluded upon objection by counsel for the District. The Tax Court's findings and conclusions in this respect are therefore clearly erroneous and invalid and the decisions should be reversed.

ARGUMENT

I

Grounds not actually used by the University nor used for any purpose for which tax exemption is granted are not exempt from taxation.

Section 1 of the statute involved⁴ exempts from taxation certain real property.. The several subsections specifically designate the property favored by tax exemption and particularly prescribe the bases upon which the exemptions are to be determined. For example, property belonging to the United States and the District of Columbia is exempted on the sole basis of ownership, use of such property being no test of exemption. Other exemptions provided, however, are, for the most part, based upon both ownership and use of the property favored. Buildings owned and operated by universities which are not organized or operated for private gain, and which embrace the generally recognized relationship of teacher and student, such as the buildings of the University in the present case, are exempted. Then, under the provisions of subsection (r)(1), *supra*, the statute exempts "grounds" belonging to any institution whose buildings are entitled to exemption provided such grounds are "reasonably required" and "actually used" for "carrying on" the "activities and purposes" of such institution.

⁴ Section 1 of the Act of December 24, 1942, 56 Stat. 1089, ch. 826 (Sec. 47-801a, D. C. Code 1951).

As shown by the Statement of the Case, *supra*, p. 3, the University's sole and exclusive purpose is the education of youth, stated in the statute of incorporation enacted in 1821. This purpose has never been changed. Although in 1821, as this Court judicially knows, there were no automobiles, there were horses and vehicles pulled by horses which no doubt were used by the University itself in conducting its program of education. It is not disputed that grounds actually used by the University in such manner would be entitled to exemption. Indeed, the proof in this case unequivocally shows that the District has exempted from taxation all "grounds" reasonably required and actually used by the University itself as parking lots for parking vehicles owned and used by the University for its activities and purposes (App. 19, 21, Finding of Fact 6). Notwithstanding this fact, however, the University seeks to have exempted, in addition to the grounds reasonably required and actually used by it for its activities and purposes, large parcels of grounds not actually used by it, but, in fact, actually used by its employees, which comprise only a small segment of the general public, without cost to them. Such use is not only outside the four corners of the exemption provision which *requires actual use by the University* but is for the convenience and pecuniary benefit of such employees who get free parking space at the expense of the taxpayers of the District.⁵ Such discriminatory advantage was not intended by the Congress as will hereinafter appear.

In December, 1942, when the tax exemption statute here involved was enacted by Congress, the Congress had already recognized, by prior enactment of the District of Columbia Motor Vehicle Parking Facility Act of 1942, approved February 16, 1942, 56 Stat. 93, ch. 76 (Title 40, ch. 8, D. C. Code 1951), that (Sec. 47-802, D. C. Code 1951)

⁵ Sec. 47-501, D. C. Code 1951, requires the Commissioners to annually fix such rates of taxation on real and personal property as will produce the money necessary to defray the District's share of expenses during the year.

"in recent years the greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion on the highways of the District"; that "parking of motor vehicles on the highways" seriously contributed to this congestion; and that since adequate off-street parking facilities had not been provided by private enterprise it may be necessary to supplement such parking spaces by off-street parking facilities provided by public undertaking. Under the District of Columbia Motor Vehicle Parking Facility Act of 1942 the Commissioners are authorized to acquire, by condemnation if necessary, and to create and operate under public regulation "public" off-street parking facilities in the District. It is contemplated under that Act that the amounts to be charged for parking of motor vehicles within said parking facilities shall be fixed at rates consistent with the achievement of the purposes of the Act which will not only defray the cost of maintaining, operating and administering the parking facilities, but, also, liquidate the cost of acquiring and improving property required for parking facility purposes as well as provide for the acquisition and improvement of other necessary parking facilities. More important, it is further provided (Sec. 40-804(d), D. C. Code 1951) that:

" * * * There shall be no discrimination in rates or privileges among the members of the public using said parking facilities."

Congress was fully cognizant of the "automobile age" and the necessity for "adequate parking facilities" referred to by the Tax Court (App. 33, 34) in February, 1942, when it enacted the off-street parking facilities law, *supra*. The policy of Congress in this regard was thereby established several months prior to enactment of the exemption statute here involved. Such policy specifically provided for *no discrimination* with respect to parking facilities for members of the general public and it is, therefore, quite obvious

why off-street parking facilities for employees of tax-exempted institutions were not exempted in the statute involved.

Judge Cooley, in his work on "The Law of Taxation" frequently cited as authority in tax cases, stated (2 *Cooley, Taxation*, 4th ed., p. 1374) that a tax exemption ought to be made on some ground of "public policy" such as might justify a donation of public funds on some general rule of which all who come within it may have the benefit. He stated (p. 1374):

"It is difficult to conceive of a justifiable exemption law which should select single individuals or corporations, or single articles of property, and, taking them out of the class to which they belong, make them the subject of capricious legislative favor. Such favoritism could make no pretense to equality; it would lack the semblance of legitimate tax legislation. It is certain that municipal bodies or taxing officers have no authority to make such exemptions unless expressly empowered by legislation * * *."

It would be favoritism of the worst kind to permit individual employees of the University, and other institutions entitled to tax exemption of their buildings, to obtain free parking facilities through tax exemption at the expense of other members of the public, whose taxes would have to be proportionately increased as a result thereof, contrary to the policy of the Congress as expressed in the District of Columbia Motor Vehicle Parking Facility Act of 1942, and contrary to the well-established legal principle that a clear right to an exemption from taxation must be shown. In deciding these cases the Tax Court failed to properly determine that the grounds involved were not "actually used" by the University as required by the statute. The Tax Court, also, ignored the policy of Congress with respect to providing off-street parking facilities at proper

rates so that there will be no discrimination among members of the public using such facilities. Furthermore, while the Tax Court recognized the well-known principles of law that exemptions from taxation are to be strictly construed, that they are never presumed or extended by implication, and that those who claim exemption must clearly show that they are entitled to it (App. 29), the Tax Court failed to apply in this case those well-established principles. The Tax Court recognized the fact that "the question here to be answered is novel" and could not find any case from any other jurisdiction to support it (App. 35), and stated that "While it is true that the project involved has no *direct* relation to the student, it does have some *indirect* connection with, and benefit to him" (App. 36). Of course the question presented is *novel* because the University, favored by tax exemption, is seeking to superimpose upon and embrace within a clearly expressed tax exemption provision an exemption which is not within the terms of the statutory language, which is grossly discriminatory as favoring a small portion of the general public, and which is contrary to the expressed policy of the Congress of the United States, legislating for the District of Columbia particularly in connection with the matter involved, prohibiting any such discrimination.

The Supreme Court of the United States stated in *Ford v. Delta & Pine Land Co.*, 164 U. S. 662, 666, 41 L. Ed. 590, 592:

"It is abundantly established by the decisions of this as of other courts that exemptions from taxation are to be strictly construed, and that no claim of exemption can be sustained unless within the express letter or the necessary scope of the exempting clause. * * * (citing) * * *"

To the same effect is *Chicago Theological Seminary v. Illinois*, 188 U. S. 662, 672, 47 L. Ed. 641, 648, where the Court stated:

"The rule is that in claims for exemption from taxation under legislative authority, the exemption must be plainly and unmistakably granted; it cannot exist by implication only; a doubt is fatal to the claim."

The doctrine is to the same effect in this jurisdiction. *Hebrew Home for the Aged v. District of Columbia*, 79 U. S. App. D. C. 64, 142 F. 2d 573; *Combined Congregations of the District of Columbia v. Dent*, 78 U. S. App. D. C. 254, 140 F. 2d 9; *Washington Chapter of the American Institute of Banking v. District of Columbia*, 92 U. S. App. D. C. 139, 203 F. 2d 68.

All of the foregoing decisions were cited by the Tax Court (App. 29, 30) but, as heretofore stated, it failed to apply to this case the principles therein expressed. In *Washington Chapter of the American Institute of Banking, supra*, this Court thoroughly reviewed the applicable principles in respect to a claimed exemption under the identical statutory provisions involved in the present case. It, therefore, seems pertinent to quote at length from that case:

"Exemptions from taxation are strictly construed against those claiming the exemption, even if the claimant is a charitable or educational institution, because such exemptions are in the nature of a renunciation of sovereignty, and are at war with sound basic tax philosophy which requires a fair distribution of the burden of taxation.

• • •

"A tax exemption of this character can justly be sustained only upon the ground that the concession is due as a quid pro quo for the performance of a service essentially public, which the state is thereby, at least partially, relieved pro tanto from the necessity of performing. Without that concurring prerequisite, an exemption becomes virtually a gift of public funds, at the expense of the taxpayer.

"Education is one of the most basic and consue-

ordinary functions of government. The state may discharge that obligation by providing all of the educational processes on its own, or it may impliedly permit or encourage private organizations and institutions to carry on such functions. Real property used in the furtherance of these objectives is, then, in fact, devoted to a quasi public purpose and tax exemption is granted as a *quid pro quo* for the assumption of that portion of the function of the state. But for such a purpose and but for the fact that a service is rendered which relieves the public of burdens and obligations which might reasonably be assumed by the state, the exemption could neither be justified nor sustained. This rule has found application, expressly or impliedly, and explanation, in many jurisdictions, including our own.

"Congress, in enacting the exemption statute, undoubtedly was aware of the rule and of the many reasons for its existence."

The exemption here claimed, which the Tax Court has sanctioned by its decisions, is contrary to all of the principles of tax exemption applicable to the statute here involved as set forth in *Washington Chapter of the American Institute of Banking, supra*. There is no obligation on the part of the District of Columbia Government, by statute or otherwise, to provide *free* or *tax-exempt* parking facilities for the general public, or for any portion thereof. As pointed out above, the policy established by the Congress is to the contrary; it even includes requirement of payment for parking on the public streets where the Commissioners have caused the installation of parking meters. (Sec. 40-616, D. C. Code 1951.)

Even if, by an extremely liberal construction of Sec. 1(r)(1) of the statute involved, use of the grounds in question by the University's employees could be considered an "actual use" by the University, there is no showing in this case that such grounds are "reasonably required" for off-

street parking. They are, of course, convenient, but they are not necessary. The University's principal facilities are located in an area roughly bordered by Pennsylvania Avenue, 20th Street, F Street and 24th Street, Northwest (App. 20). This Court will take judicial notice that there is, and has been for many years, a comprehensive system of public transportation in the District, which includes street cars and buses operating on approximately schedule time,⁶ and that such transportation system operates on Pennsylvania Avenue, Northwest, adjacent to the University's facilities. Many of the University's employees reside in nearby Maryland and Virginia (App. 20), to which States the public transportation system extends in all directions. There is no reason whatsoever why those employees cannot park on commercial parking lots in the vicinity of the University, or fringe-park away from the congested down-town area of the District and use public transportation, and thereby pay for the parking facilities and transportation services needed by them as is done by the remainder of the general public. The officials of the University who made free parking spaces available to employees were not at all concerned with the fact that the taxes of other property owners in the District might have to be increased in order to provide parking spaces for these favored individuals (App. 8). There is no basis or theory in law or justice which requires the taxpayers of the District to provide free parking spaces, through tax exemption, for certain residents of Maryland and Virginia who come to the District to earn a livelihood at the University. The only lawful and just way to provide off-street parking facilities in the District, in addition to those provided by private enterprise, is on a non-discriminatory basis under authority of the District of Columbia Motor Vehicle Parking Facility Act of 1942, *supra*.

⁶ *J. Maury Dove Co. v. Cook*, 59 App. D. C. 61, 32 F. 2d 957; *Texas Electric Ry. v. Shelton et ux.*, (Tex. Civ. App., 1926), 286 S.W. 526; *Commonwealth ex rel. Ferguson v. Ball et al.*, 277 Pa. 301, 121 A. 191.

Contrary to the statements made by the Tax Court in its opinion (App. 34, 35), use of grounds by employees as parking lots is not at all analagous to use of dormitories and dining halls. Different statutory provisions govern the exemption of buildings and grounds. Sec. 1(j) of the statute (see footnote 1, *supra*), exempts "buildings" of the favored universities, etc., which are "operated" by them in connection with the "generally recognized relationship of teacher and student," subject to the requirement of whole or partial taxation if the prohibitions contained in Sec. 2 of the statute (see footnote 1, *supra*) become applicable, and, further, subject to the requirement of taxation if the annual report showing the purposes for which such property was used during the preceding calendar year is not timely filed (Sec. 47-801c, D. C. Code 1951). It makes no difference in respect to the exemption of buildings whether any building involved is used for the instruction of students, for student dormitories, for storage purposes, or for serving meals to resident students. Sec. 1(r)(1), *supra*, pertaining to the exemption of "grounds" is couched in entirely different and more restricted language. The Tax Court's analogy with respect to the two kinds of exemption is, accordingly, inapposite.

The grounds here involved were not "reasonably required and actually used" for the University's purposes and, therefore, are not exempt. *Gibbons v. District of Columbia*, 116 U. S. 404, 29 L. Ed. 680. Property owned but not used by the favored institution, which is used by others, is not entitled to exemption where use is the test (*Howard University v. District of Columbia*, 81 U. S. App. D. C. 40, 155 F. 2d 10; *Hebrew Home for the Aged v. District of Columbia*, *supra*), even though no rent is received from such use (*City of Hoboken v. East German Annual Conference of Methodist Episcopal Church, et al.*, 19 N. J. Misc. 266, 18 A. 2d 718; *Markham Hospital v. City of Longview, et al.*, (Tex. Civ. App., 1945), 191 S. W. 2d 695).

The policy of Congress with respect to grounds not required and actually used by institutions entitled to tax exemption under the statute involved is set forth in Sec. 1(r)(2) thereof (Sec. 47-801a(r)(2), D. C. Code 1951) which exempts "Additional grounds belonging to and forming a part of the property of such institutions or organizations as of July 1, 1942." In order to obtain such exemption it is required that a written application be made to the Commissioners, supported by an affidavit that such additional grounds are not held for profit or sale but only for the enlargement and expansion of the institution. Any property acquired after July 1, 1942, could not be exempted under this section. It is the practice of the University to acquire all the real property it can in its down-town area (App. 12). The record does not show precisely when the grounds here involved were acquired, but it does show that they were acquired prior to the dates when the University's employees began using them within the past two years for parking their automobiles (App. 12, 15, 16). Of course, if these grounds were acquired prior to July 1, 1942, for future expansion they probably would have been exempted as "additional grounds" under Sec. 1(r)(2), *supra*, and it would make no difference if they were used by the University's employees for parking their automobiles so long as a rent or income was not received which would subject them to taxation under Sec. 2 of the statute, *supra*. But Congress put a limit on its generosity with respect to exemption of such grounds by providing that they had to be owned by the exempted institutions as of July 1, 1942. The Committee report on the bill which was enacted into the statute here involved shows that careful study was given to the matter of exempting grounds. With respect to "additional grounds" the Committee felt that exempted institutions had acquired only sufficient grounds for future enlargement and expansion, and stated: "The landholdings as of July 1, 1942, are deemed sufficient to meet such needs and con-

stitute the minimum for such needs.”⁷ Congress was aware of the doctrine of strict construction with respect to tax exemption statutes and the many reasons for its existence when it enacted the statute here involved as this Court pointed out in *Washington Chapter of the American Institute of Banking v. District of Columbia*, *supra*. The judicial sanction of the exemption of grounds not “actually used” by exempted organizations but actually used by their employees not only would be contrary to the carefully worded statutory requirement for tax exemption under Sec. 1(r)(1), *supra*, but would nullify the policy of Congress as expressed in Sec. 1(r)(2), *supra*, and open wide the door for the exemption of all “additional grounds” acquired after July 1, 1942, as free parking lots for employees of the exempted organizations. It is respectfully submitted that this Court should not permit any such result and should, therefore, reverse the decisions of the Tax Court.

The Tax Court stated (App. 35) that a search of authorities, text books and State tax services revealed no case dealing with the matter of the exemption of automobile parking lots “owned and operated by schools or by other semi-public institutions” except a case decided by the Tax Court under the statute here involved (App. 35). The case referred to, *National Catholic Welfare Conference v. District of Columbia*, Dkt. No. 1000, 76 Wash. Law Rep. 441, involved, *inter alia*, a vacant lot which was used in part for the delivery of material in and out of the exempted premises and in part for parking 15 or 20 automobiles by personnel of the Conference or of its subsidiary organizations, for which a charge of \$2.00 a month per car was made. That case is not at all like the present cases. The amount of tax involved with respect to a small portion of the lot used to park automobiles was *de minimus* and therefore no appeal was taken to this Court by the District.

⁷ House Report No. 2635, 77th Congress, 2d Session (1942), p. 7.

We do not believe that cases involving the interpretation of statutes of other jurisdictions are very helpful, except with respect to general principles like those set forth in the case of *Washington Chapter of the American Institute of Banking, supra*, because of material differences in the various statutes. However, counsel for the District have found three cases involving parking lots of tax-exempt institutions which we submit below:

In the case of *Congregational Union of Cleveland v. Zangerle* (1941), 138 Ohio St. 246, 34 N.E. 2d 201, a vacant lot adjacent to a church and used by the members of the church only as a parking lot while attending services and as the location of a church bulletin board was held not to be within the scope of the statute which exempted grounds "necessary for proper occupancy, use and enjoyment" of a house of public worship. The Court stated that the mere statement of the question whether the use met the exemption requirement would seem to supply the answer, and then further stated:

" * * * Manifestly the use of the large, vacant lot is *convenient* for the members of the church located on the small parcel; but that is vastly different from finding that the large lot is *necessary* for the proper occupancy, use and enjoyment of the other."

In *Immanuel Presbyterian Church v. Payne* (1928), 90 Cal. App. 176, 265 P. 547, grounds adjacent to a church which afforded light and air for the church building and which was also used by the congregation as a parking space for their automobiles while attending services were held to be exempt under a statute which exempted real property required "for the convenient use and occupation" of buildings used for religious worship. It is noted that the grounds were used not only for a parking lot but afforded light and air, which latter was recognized in *Gibbons v. District of Columbia, supra*, as a proper basis for exempting grounds.

It is also noted that the statute in this case exempted grounds for *convenient* use and occupation of the church building.

In *First Baptist Church v. Pittsburgh* (1941), 341 Pa. 568, 20 A. 2d 209, the statute exempted from taxation "all churches * * * with the ground thereto annexed necessary for the occupancy and enjoyment of the same". A large lot was acquired by the church several years after the church building was constructed. This lot was adjacent to the original lot on which the church building was built. The church landscaped and planted two-thirds of the large lot and placed cinders on the remainder, which was at a lower grade, thus providing a parking lot for the use of members attending services in the church building. In denying exemption to the property the Supreme Court of Pennsylvania stated:

" * * * The lot later purchased and for which an exemption is now claimed is a large lot located at the rear of the church and at a point where there is the least need for light, air and approach. If such a lot in its entirety is exempt, little limitation will be placed on the amount of land that may be taken over by a church, thereby casting an additional burden on other taxpayers."

II

Findings of Fact and Conclusions that the grounds involved were used by the University are clearly erroneous and therefore invalid.

It was held in *District of Columbia v. Pace*, 320 U. S. 698, 703, that findings of fact of the Board of Tax Appeals for the District of Columbia (now the District of Columbia Tax Court) are to be treated as presumptively correct and are accepted unless clearly wrong. This is essentially the same as required with respect to findings of fact in cases tried without a jury in United States District Courts under Rule No. 52 of the Federal Rules of Civil Procedure. A

finding of fact is clearly erroneous if it is (1) unsupported by substantial evidence, (2) contrary to the clear weight of the evidence, or (3) is induced by an erroneous view of the law. *Policyholder's Nat. Life Ins. Co. v. Harding* (CA 8, 1945), 147 F. 2d 851; *Sears, Roebuck & Co. v. Talge* (CA 8, 1944), 140 F. 2d 395. An incorrect conclusion by a Trial Court qualifies as a "clearly erroneous" finding. *Hardt, et al. v. Heller Bros. Co.* (CA 3, 1948), 171 F. 2d 644, 648. If there is no support whatsoever in the evidence to support a finding, it is "clearly erroneous". *Slavin v. Port Service Corporation* (CA 3, 1943), 138 F. 2d 386.

The statement of the case, *supra*, plainly shows that an effort by one of the University's witnesses to get into evidence an incorrect conclusion as to the use made of the property involved was objected to by counsel for the District and sustained by the Tax Court. Consequently, the only evidence in these cases points clearly to the fact that the property here involved was not used by the University for its activities and purposes, but was used only by individuals for their exclusive purposes. Notwithstanding these undisputed facts, the Tax Court made findings in each case that the grounds in question were used by the University. These findings are, without question, clearly erroneous and, in and of themselves, should result in reversal of the decisions of the Tax Court.

From the aforesaid erroneous findings that the grounds involved were used by the University, the Tax Court erroneously made an ultimate finding of fact in each case that the area of land involved was, on July 1, 1953, "reasonably required and actually used for the carrying on of the activities and purposes" of the University (App. 26, Finding 3; App. 27, Finding 6; App. 28, Finding 5; App. 29, Finding 5). The statute creating and governing the Tax Court was approved May 16, 1938,⁸ after this Court had de-

⁸ The Bill (H. R. 10066, 75th Congress) was enacted and presented to the President for his approval on May 11, 1938 (83 Congressional Rec. 6713).

cided the case of *Saginaw Broadcasting Company v. Federal Communications Commission*, 68 App. D. C. 282, 96 F. 2d 554, cert. den. sub. nom *Gross v. Saginaw Broadcasting Company*, 305 U. S. 613, 59 S. Ct. 72, 83 L. Ed. 391. In that case the Court said:

“The requirement that courts, and commissions acting in a quasi-judicial capacity, shall make findings of fact, is a means provided by Congress for guaranteeing that cases shall be decided according to the evidence and the law, rather than arbitrarily or from extralegal considerations; * * *. The requirement of findings is thus far from a technicality. On the contrary, it is to insure against Star Chamber methods, to make certain that justice shall be administered according to facts and law. This is fully as important in respect of commissions as it is in respect of courts.”

What this Court said is equally applicable in respect of the Tax Court. This Court went on to state:

“In discussing the necessary content of findings of fact, it will be helpful to spell out the process which a commission properly follows in reaching a decision. The process necessarily includes at least four parts: (1) evidence must be taken and weighed, both as to its accuracy and credibility; (2) from attentive consideration of this evidence a determination of facts of a basic or underlying nature must be reached; (3) from these basic facts the ultimate facts, usually in the language of the statute, are to be inferred, or not, as the case may be; (4) from this finding the decision will follow by the application of the statutory criterion.”

In these cases, if the Tax Court had followed the requirements set forth in *Saginaw Broadcasting Company, supra*, the only proper decision which could have been made by that Court in each case was that the grounds involved, having been actually used solely by individuals and not by the University, did not qualify for exemption under the statu-

tory criterion which requires that such grounds be "reasonably required and actually used for the carrying on of the activities and purposes" of the University.

CONCLUSION

It is respectfully submitted that the decisions of the Tax Court were erroneous and should be reversed.

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BRIEF FOR RESPONDENT

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA ~~Circuit~~ *United States Court of Appeals*
For the
District of Columbia Circuit

—
No. 12,290
No. 12,291
No. 12,292
No. 12,293
—

FILED OCT 20 1954

Joseph W. Stewart
CLERK

DISTRICT OF COLUMBIA, *Petitioner,*

v.

THE GEORGE WASHINGTON UNIVERSITY,
Respondent.

—
On Petition for Review of Decisions of the District of Columbia
Tax Court
—

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STATEMENT OF QUESTIONS PRESENTED

1. The main question presented is whether an urban university, with over 10,000 students and a staff of over 2,000, 60% of whom are automobile commuters, located in a highly congested automobile traffic area in downtown metropolitan Washington, is entitled to a real property tax exemption for automobile parking lots for less than 10% of its staff under a statute providing for exemption where such grounds are "reasonably required and actually used for carrying on the activities and purposes of the University."

2. Whether, where such grounds were so used they were "actually used for carrying on the activities and purposes of the University" and whether findings and conclusions to that effect by the District of Columbia Tax Court were erroneous.

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DISTRICT OF COLUMBIA, *Petitioner,*

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THE GEORGE WASHINGTON UNIVERSITY,
Respondent.

On Petition for Review of Decisions of the District of Columbia
Tax Court

BRIEF FOR RESPONDENT

COUNTER STATEMENT OF THE CASE

The taxes here involved are real property taxes for the fiscal year ending June 30, 1954, which the respondent, The George Washington University (hereinafter called "University") contended were tax exempt as grounds belonging to and reasonably required and actually used for carrying on its activities and purposes. (App. 19)

The District of Columbia Tax Court agreed. (App. 19, et seq.) Petitioner (hereinafter called "District") brought a petition for review in this Court. The District's statement does not place the case in the perspective in which it was decided below. Hence, this counterstatement is felt necessary.

The areas here involved are used by the University and its hospital for parking areas for a small proportion (less than 10%) of its faculty and a handful of administrative department heads and research officials. Actually, as to research officials and administrative officials, only 7 parking spaces as to each are involved. (App. 11, 16)¹ In the case of administrative officials (No. 12,293), the number of spaces is 13. (App. 14) The faculty lot is larger than these, but even more wholly inadequate as to need. (App. 30) It provides 125 to 150 spaces. (App. 5) An example of the use of such lots is found in No. 12,293. It is concerned with parking spaces for the University hospital department heads. Seven parking spaces are supplied. They are used by the Superintendent of the hospital, the Assistant Superintendent and the heads of the major services of the hospital such as surgery, obstetrics, laboratory and anesthesiology. (App. 16)

The University has over 2,000 members of its staff and about 10,000 students. (App. 20) Of these, about 60% commute to and from the University by private automobiles. (App. 20) Of course, the matter of supplying parking space for faculty members presents a problem since there is only enough space for a limited few. Hence, the parking privilege is one much sought after. (App. 20) Many who do not have privileges must park as far away as the Lincoln Memorial. (App. 20)

The University is located in a highly congested area in downtown metropolitan Washington. This is, of course, conceded by the District. (R. 59, 60) Parking on the streets in the entire area surrounding the University is

¹ Nos. 12,291 and 12,292.

restricted. (App. 23, et seq.) There are in the area some commercial parking lots, each of which make a substantial charge for their use. (App. 21, et seq.)

Furthermore, the parking problem of the University is complicated by the existence in the vicinity of a number of apartment houses, church buildings, church houses and several government department buildings. (App. 25)

As a result of these conditions, the University, like its sister institutions, Georgetown University, Catholic University, and American University, supply free parking space to faculty and administrative employees. (App. 20)² The organic acts stating the purposes of the University were stipulated to by counsel. (App. 38)

The District has exempted a few parking spaces where vehicles owned by the University have been parked. There have also been exempted parcels of land where automobiles owned by students are parked. *George Washington University v. District of Columbia Tax Court*, Docket No. 1352, decided March 17, 1953.

In its statement of the case the District has quoted a portion of the transcript relating to No. 12,292. This case involves the validity of the Tax Court's decision as to exemption of 7 parking spaces for research officials of the University.³ Lest it be inferred that these officials were not officials of the University and engaged in activities furthering the purposes of the institution it should be noted that had the excerpt from the transcript been continued by the District, it would have read: (App. 11, 12)

“ * * *

By Mr. Euwer:

Q. What is their connection with the university, Mr. Herzog? A. These particular men are connected

² It should be noted that the issue has apparently not been raised by the District with the University's sister institutions in the Tax Court.

³ Research is, of course, a proper, if indeed not an essential part, of University activities and purposes. *City of Hoboken v. Division of Tax Appeals*, 134 N.J.L. 594, 49 A. 2d 587 (1946); *People v. Tax Commissioners*, 96 NYS (2d) 36 (1950).

with a research contract that the university has with the Quartermaster Branch of the War Department.

Q. By whom are they employed? A. They are employed by the George Washington University.

The Court: What connection has this, or what relation has this project for the Quartermaster Corps with a university which is supposed to teach students?

The Witness: This particular project is in the field of psychology. It is a research adjunct of the university. We have hundreds of research contracts, research efforts on the part of the university, that are not participated in by faculty members per se. We do research in cancer, in medicine, all types of research.

The Court: What advantage does a student get from this research? Will it permit you to teach better?

The Witness: We think it does."

The District in its statement says that the Court made erroneous findings because it did not say that the lots involved were used by vehicles owned by individuals and that for such lots to be exempt the automobiles parked thereon must be owned by the University itself. This contention is treated in more detail, *infra*, p. 16 et seq. but it is enough to say here that a university cannot act except through the individuals who are its instruments. Moreover, if this is to be the test, to be consistent the Tax Court and the District should not have permitted the parking lot for student automobiles to be exempted as it is.

Again, the District contends (Pet. Br. 5, 6) that the Tax Court's findings as to the number and personnel of the University parking facilities on campus areas, the furnishing of parking facilities free of charge by other universities, commercial parking facilities and parking restrictions, are "in no wise pertinent" and "immaterial". The statute involved says that "grounds belonging to and reasonably required" by exempt institutions are exempt. Under such conditions it is difficult to conceive of findings that could be more pertinent or material where the issue is the reasonableness of furnishing parking lots.

Too, the Tax Court is admonished for asserted failure to make separate conclusions of law (and in this connection the District has made this brief the vehicle for pointing out other supposed derelictions of the Tax Court in other cases pending in this Court). (Pet. Br. 6) This reproof is apparently made in passing, for it does not appear to rise to the dignity of an issue in this appeal. If answer be required, it seems fully furnished by this Court in *Food Fair Stores v. Square Deal Market*, — U. S. App. D. C. —, 206 F.2d 482, 484, n. 3 (1953). It is enough for purposes of review if the findings and opinion afford a clear understanding of the basis of the decision below.

REGULATION INVOLVED

Zoning Regulations of the District of Columbia, Effective September 1, 1953.

* * *

“Section XIV(a)—Parking Area

1. In all zoning districts there shall be provided at the time of erection of any building hereinafter designated, minimum off street parking area for motor driven vehicles in amounts not less than hereafter specified and, except as provided in Section XXIII, such area shall thereafter be maintained and not reduced below the requirement of this section.

* * *

4. Except as otherwise provided in this paragraph, the amount of off street parking area required under paragraph 1 of this section shall be determined in accordance with the following table:

USE

* * *

High schools, colleges,
universities

* * *

1 parking space for each 25 students based on a maximum planned classroom capacity (exclusive of laboratories and workshops) of 14 square feet per student.”

SUMMARY OF ARGUMENT

The issue in this case is whether 177 parking spaces for over 2,000 staff members of The George Washington University, 60% of whom are automobile commuters, are "reasonably required" and "actually used" in the language of the exempting statute. As the District of Columbia Tax Court found below in exempting the lots, the University is located in downtown Washington where the general vicinity is heavily congested with automobile traffic. Indeed, the Congress has enacted a statute under which the District has issued regulations requiring off street parking facilities to be furnished by the University where new classroom buildings are constructed.

The fact that Congress has authorized the acquisition and operation of *public* parking lots, where there may be no discrimination among the general public as to use, is obviously inapplicable. The sole issue here is whether a *private*, parking lot, not open to the public, meets the requirements for exemption under this statute. Indeed, by providing this private parking facility, the University is relieving the condition which the Congress is seeking to solve by the statute involved. Moreover, while students are also members of the general public, a parking lot for their use has been exempted by the Tax Court.

The further argument that "actual use" requires that for a parking lot to be exempt the automobiles parked thereon must be owned by the University itself is invalid. Its fallacy is demonstrated by the presumption that the District would grant exemption if the University bought automobiles for all of its staff, or at least for the 177 using the lots. It seems obvious that the Congress could have intended such a result. Moreover, every institution can act only through those individuals who comprise it and use by them is use by the institution. The Congress of course knew this. The Tax Court's finding and conclusions that the lots were used by the University were entirely proper and valid.

ARGUMENT

I. The Court Below Properly Decided That Several Small Parking Lots for Use by a Small Number, Less Than 10%, of the Staff of the University Were Tax Exempt as "Reasonably Required" and "Actually Used" by the University

By petition in the Court below respondent sought relief from assessment for several small parcels of ground used by the University as automobile parking lots for a small number of its large faculty and staff. (App. 1, 39, 42, 45) Exemption was sought under that provision of the District of Columbia Code which exempts:

"Grounds belonging to and reasonably required and actively used for the carrying on of the activities and purposes of any institution or organization entitled to exemption under the provisions of sections 47-801 a to 47-801 f". (D.C. Code 1951 ed. § 47-801 a(r)(1).

The University is, of course, tax exempt under the provisions of Section 47-801 a(j).⁴

Heretofore, § 47-801 a(r)(1) has not received extended judicial examination either by this Court or by the District of Columbia Tax Court in connection with educational use. Indeed, the sole case in this Court dealing with grounds of a university involved producing income used solely for such purpose. Hence, it would not be applicable here. *Howard University v. District of Columbia*, 81 U.S. App. D.C. 40, 155 F. 2d 10 (1946).

Accordingly, there are no interpretative guides as to what is "reasonably required". Hence, circumstances determined below must direct and control whether it is "reasonable" for a large metropolitan university to require a small number of parking spaces for its faculty and officials. In short, practical realities in the light of present day conditions must determine what is now reasonably required.

⁴ "Buildings belonging to and operated by schools, colleges, or universities which are not organized or operated for private gain, and which embrace the generally recognized relationship of teacher and student." (D.C. Code 1951 ed. § 47-801 a(j).

Rule of Construction

First, this Court is admonished by the District (Pet. Br. p. 12) that due regard must be paid to the familiar principle that tax exemptions are to be strictly construed. To be sure, claims for tax exemption should be subject to careful judicial scrutiny, but a rule of construction is by no means an end in itself. Thus, this Court has held that:

“While tax exemption statutes should be strictly construed, that principle does not justify the interpolation of such qualification into a statute, clear in its meaning, for the purpose of defeating the privilege granted.”⁵

And, too, the rule means only that:

“The rule of strict construction does not relieve the Court of the duty of interpreting the exemption by the ordinary rules of construction in order to carry out the intention of the legislature, and does not apply where there is no language in the act justifying or requiring construction. A fair and reasonable construction of the statute or contract must always be adopted giving the language used its ordinary meaning and taking into consideration the purpose and spirit of the exemption as well as the public policy entertained at the time and history of the times when the statute was passed.” 2 Cooley, *The Law of Taxation* (4th ed. 1924, p. 1416-1417).

It should be noted here that the statute itself notes the manner in which it shall be interpreted. It speaks of exemption in terms of those grounds *reasonably* required for certain purposes.⁶ It can hardly be argued that such language must not affect the manner of interpretation.

⁵ District of Columbia v. Mt. Vernon Seminary, 69 U.S. App. D.C. 251, 254, 100 F. 2d 116, 119 (1938).

⁶ It should be here noted that the statute immediately preceding the statute now in effect exempted grounds only when “*absolutely* required.” (Italics supplied) D.C. Code (1940 ed.) § 47-801a. Accordingly, statutory conditions for exemption were apparently relaxed by the statute now in effect.

Of course, the rule of reason includes, and there was drafted therein, the flexibility to meet changing conditions. For, as the Tax Court here said:

“What was undoubtedly *not* necessary several years ago to the maintenance and operation of an institution may at this time and age be reasonably required for the carrying on of its activities.” (App. 32)

The Quid Pro Quo Theory

An effort to invalidate exemption is made on the basis of the case of *Washington Chapter of the American Institute of Banking v. District of Columbia*, 92 U.S. App. D.C. 139, 203 F. 2d 68 (1953).

The District argues (Pet. Br. pp. 13, 14) that by its decision in this case, this Court adopted the view that the Congress in enacting the exempting statute intended that an applicant for exemption must demonstrate, in addition to the statutory prerequisites, that it renders a service which the public might otherwise have to assume or at least reasonably might assume. That, in short, there is a broad requirement of performance of a public function which while not articulated in the statute is none the less a condition to exemption. Or, to state it another way, that there must be a *quid pro quo*.

In a somewhat tenuous application of this theory, the District argues, in effect, that this test must be applied to each separate use of property by an exempt institution to determine if each individual use falls within the inarticulate premise underlying all exemptions. They say that there is no obligation on the District to supply tax exempt parking to individuals, *ergo*, the claimed exemption must fall. Thus, it is to be supposed that it could equally as logically be argued that the District of Columbia is under no obligation to furnish the general public with storage space, or athletic fields or any of the numerous activities now exempt which are required to service the purpose for which exemption to the University was granted.

In any event, as this Court has later pointed out, the *quid pro quo* theory, if applicable at all, has limitations which the District seems prone to overlook. In *District of Columbia v. National Wildlife Federation*, — U.S. App. D.C. —, 214 F. 2d 217 (1954). This Court held that such a doctrine need not be applicable in all exemption cases. There the Court said (p. 219):

The contrary view we think is due to a misunderstanding of the postulate than an exemption is a *quid pro quo* for public service. Colorable support for the misunderstanding is found in previous opinions of this court, but we think the District reads too much from their language.”

This Court then held that a wildlife conservation society with but small local activity (and whose relief of local government burdens at best was dubious) was tax exempt.

In any event, if the *quid pro quo* postulate has validity and application at all, its extension as a test of each separate use of grounds by the University, where the use is examined in a manner unrelated to the reason why the institution was exempted in the first place, finds no justification in either logic or authority. The utility of the postulate is that it may be merely one of the tests as to whether an institution itself is exempt. Once that has been determined, the statutory tests of reasonable requirement and actual use are applicable as to each separate use of grounds. In none of the cases cited by this Court as applicable and explanatory in other jurisdictions of the *quid pro quo* theory of exemption, is it suggested that the concept has application beyond that of its initial function as a test of institutional exemption.⁷

Parking Lot Cases

As the District points out, cases in other jurisdictions involving parking lots are few and none involve educational

⁷ *Washington Chapter v. District of Columbia*, 92 U.S. App. D.C. 139, 142, n. 13, 203 F. 2d 68, 71 n. 13 (1953).

institutions (Pet. Br. p. 18 et seq.) Of these cases one is of particular significance, *Immanuel Presbyterian Church v. Payne*, 90 Cal. App. 176, 265 P. 547 (1948), which provides significant parallels to the case now under consideration.⁸ There, as here, the institution was located in a highly congested area in a downtown section of a large city (Los Angeles). The Court there held, p. 177:

“The evidence further shows that the streets in the vicinity of said church during the hour when services are held are badly congested; that it is impossible for one-half of said persons attending said church using their own private automobiles for conveyance to and from said church to park upon the said property in question and the other one half of such persons have to park as best they can on the proximate vicinity of said church on such badly congested streets. The evidence further shows that no charge of any kind is made, either directly or indirectly, for the parking of said automobiles. Therefore, the finding of the trial court that the property on which the parking space is established and maintained, which is immediately adjacent to the said church, was necessary and required for the convenient use and occupation of the said building is the only finding the trial court could have made.”

The implication of the District that parking was merely incidental to light and air (which is a recognized ground for exemption in the District) seems somewhat less than candid as the quoted portion of the court's opinion indicates. Indeed, it might well be suggested that such comments were *obiter*.

Congregational Union of Cleveland v. Zangerle, 138 Ohio St. 246 (1941), and *First Baptist Church v. Pittsburgh*, 341 Pa. St. 568 (1941) also deal generally with the problem.

In the *First Baptist* case, a lot which was used only partially for parking was held not exempt as not reason-

⁸ The statute there provided for exemption for so much of the real property, on which buildings used solely and exclusively for religious workshops are situated, as may be required “for the convenient use and occupation of said buildings.”

ably "necessary for the occupancy and enjoyment"⁹ of the church building. That the court's opinion would have been otherwise had the entire lot been used for this function seems indicated by its language that:

"Since the church could not support its claim that the *entire* lot was exempt by showing that a portion of the lot was used for parking purposes for the use of its members, it became necessary for the church to show that the remaining portion of the land at the corner of Ruskin Avenue and Bayard Street was reasonably necessary for the occupancy and enjoyment of the church building." p. 575. (*Italics supplied*)

The holding in the *Zangerle* case seems to be based upon the fact that while the lot was used for parking it was both too large and its use too intermittent to justify exemption as "*necessary for proper occupancy use and enjoyment*" of the church involved.

The sole authority in the District of Columbia is *National Catholic Welfare Conference v. District of Columbia Tax Court*, Docket No. 1001, 76 Wash. Law Rep. 441, decided January 28, 1948. Since that time it has been controlling in the District and presumably reliance has been placed thereon by District taxpayers.

Petitioner seeks to minimize its failure either to observe the principle of that case or to appeal from the decision on the ground that, first, parking was incidental to the principal use of access, and, secondly, that in any event, the parking use was *de minimus*. The fact is that the area involved in parking was substantially larger than that as to access. The parking use is dismissed as *de minimus* since involving a mere 15 or 20 cars. In the instant case, Docket No. 12,291 is concerned with 7 parking spaces. Docket No. 12,292 is concerned with 13 parking spaces. Docket No. 12,293 is concerned with 7 spaces. The easy transition from what was *de minimus* in 1948 to what is today a matter of moment for this Court is not explained.

⁹ The statutory language for exemption in both the *First Baptist* and *Zangerle* cases.

The Off Street Parking Law

The off street parking law of the District of Columbia is cited¹⁰ by the District in an apparent effort to establish that exemption for parking areas for university officials discriminates against the general public, since the act provides for no discrimination among the members of the public using such facilities. Accordingly, it is to be inferred that Congress did not intend that staff members of the University receive parking space on terms not available to the general public.

But, there can be no issue of discrimination since the parking law is dealing with *publicly owned and used* property while the tax exemption statute is dealing with *privately owned and used* property. Indeed, the statutes speak in entirely different terms and are wholly unrelated. The sole tests for exemption are those carefully provided by the Congress in the statute dealing with such matters and they are not subject to a tenuous and unsound implication from a provision of a statute dealing with an entirely different subject matter in an entirely different context.

Further, the District claims that because the off-street parking law provides for no discrimination in public parking the Congress must have considered exemption of off-street parking for officials of tax exempt institutions and rejected such a proposition.

Nothing could be further abroad. The legislative history reveals no such proposal. On the contrary, it is easier to assume that the Congress regarded that off-street parking for such officials was already provided for in the exemption statutes for real property for tax exempt institutions, and that the University had accordingly relieved the acute parking situation to this extent.

Moreover, the District agrees that, while such parking spaces are convenient, and they are not "reasonably re-

¹⁰ Pet. Br. pp. 9-10.

quired" within the language of the exempting statute. It is said that officials may use fringe parking, commercial lots, public transportation, etc.

Zoning Regulation Requiring the University to Provide Off Street Parking

The answer as to why such spaces are "reasonably required" is one made by the District itself.

The Act of March 4, 1942, 56 Stat. 122, 77th Cong. 2nd Session, amended the existing zoning act for the District to provide that:

"The said Zoning Commission shall also have power to promulgate regulations *to require*, with respect to buildings erected subsequent to the promulgation of such regulations, that *facilities be provided and maintained either on the same lot with any such building or elsewhere, for the parking of automobiles and motor vehicles* of the owners, occupants, tenants, patrons, and customers of such building, and of the business, trades, and professions conducted there'n." (Italics supplied)¹¹

Pursuant thereto (and, of course, to the general zoning statutes in effect)¹² the Zoning Commission issued the following regulations:¹³

"Section XIV(a)—Parking Area¹⁴

1. In all zoning districts there shall be provided at the time of erection of any building hereinafter designated, minimum off street parking area for motor driven vehicles in amounts not less than hereafter

¹¹ By such language, of course, the Congress recognized the existence of an acute parking problem.

¹² The Acts of March 1, 1920, 41 Stat. 500, 66th Cong. 2nd Sess. and of June 20, 1938, 52 Stat. 797, 75 Cong. 2nd Sess.

¹³ Effective 1949 and thereafter.

¹⁴ Section XIV(a) adopted June 6, 1942, effective Sept. 8, 1942, amended July 29, 1949, Zoning Regulations of the District of Columbia (Sept. 1, 1953).

specified and, except as provided in Section XXIII, such area shall thereafter be maintained and not reduced below the requirement of this section.

* * *

4. Except as otherwise provided in this paragraph, the amount of off street parking area required under paragraph 1 of this section shall be determined in accordance with the following table:

USE

* * *	* * *
High schools, colleges, universities	1 parking space for each 25 students based on a maxi- mum planned classroom capacity (exclusive of laboratories and work- shops) of 14 square feet per student." ¹⁵

It is difficult to conceive of how a more pertinent determination could be made as to whether parking facilities for the University were reasonably required. To be sure, the regulation is not applicable to facilities existing at the time of its effective date. But its relevance here is its conclusion as to the condition giving rise to the requirement. Too, lest it be said that the only requirement of the regulation is that the University furnish space for *students*, it should be pointed out that the District was merely creating a formula and no doubt decided that the number of students was a convenient standard for determining the number of parking spaces required for all who inhabit the building. For those who are concerned with such matters it is probably a matter of no great moment to determine the number of officials necessary to provide educational and administrative services for any given number of university students.

In the light of this regulation, it might be well to consider the District's position in the event of what might

¹⁵ Op. cit. supra, pp. 22 and 24.

occur in a highly probable case. The University owns grounds which are now tax exempt. It decides to erect a classroom building thereon. The District requires an off street parking lot adjacent thereto. Would the District then say that the lot which it has commanded to be set aside on the basis of what it has found to be reasonably required for this purpose is no longer tax exempt? It would appear that to ask the question is to provide the answer.

In summary, it is difficult to come to any conclusion other than that of the Court below. As was there pointed out, the automotive age has brought with it complex problems and none more complex in urban areas than that of parking. There are few cities where the problem exists in more acute form than in the City of Washington. It has been the subject of countless investigations, suggestions and studies by various public and semi-public groups, the Congress, and the District itself. To say more as to whether these few lots are reasonably required seems presumptuous.

II. The Parking Lots in Question Were Actually Used by the University and the Finding and Conclusion of the Tax Court Are Clearly Valid

The District also takes the position that the University is not entitled to exemption because it did not actually use the area itself, but that it was used instead by faculty and administrative officials. They say that they have already exempted lots for the parking of vehicles owned by the University.¹⁶ The conclusion must be that the University is not entitled to exemption unless the vehicles are owned by it.

Significantly no mention is made of the student parking lot which is considered by the District to be tax exempt, though the vehicles are, of course, owned by the students.¹⁷

¹⁶ The District has exempted lots for the few vehicles the University owns.

¹⁷ *George Washington University v. District of Columbia*, Docket No. 1352, D.C. Tax Court, decided March 17, 1953.

A fortiori it would appear that if the University purchased vehicles for the use of its faculty and officials the District would concede that the lots were exempt.

Obviously, the Congress intended no such absurd results. The Congress knew, as all know, that an institution or organization is composed of human beings through which it must act and who must be its instrument for the performance of its activities and purposes. The actual use by its human instruments is actual use by the University.

By analogy, it might be said that the furnishing of parking space to faculty members by an urban university is much akin to the furnishing of faculty homes by a rural university. Where the primary purpose is furthering the purposes of the institution the courts have generally had no difficulty in holding such use to be tax exempt. 2 Cooley, *The Law of Taxation* (4th ed.) § 780, p. 1614; Zollman, *American Law of Charities* (1924 ed.) § 728, p. 492, 25 N.Y.U. Law Quarterly 1916 (1950). If supplying an entire house is tax exempt, it is difficult to contend that a parking lot is not. So, too, the District takes no position that the faculty club and its dining rooms are not tax exempt though there may be other dining facilities in the neighborhood.¹⁸

In short, actual use means no more than use by the institution's staff for the carrying on of the activities and purposes of an institution. It would not seem subject to real question that the furnishing of a small number of parking spaces for these purposes in view of conditions already reviewed could be other than for the carrying on of the activities and purposes of an institution.

The District further complains that the Tax Court has made findings that the grounds involved were used by the

¹⁸ Note, too, the highly pertinent analogy of the Tax Court with respect to use of university dining halls and dormitories. (App. 34, 35). The attempted distinction of the District (Pet. Br. 16) is hardly convincing since the "buildings *** operated" by an exempt institution must still meet the tests required for exemption. Obviously, unless such buildings meet such primary standards they are not subject to, nor are they, exempted.

University are erroneous. They say that the Court's findings that the grounds were used by the University are erroneous because the Court only said that they are used by the faculty and officials of the University. If such a contention is seriously offered, no more need be said of it than what has already been suggested. A university may no more act except through individuals than may any other institution or organization. The Court below has said as clearly as it is possible to say that such was the use.

There is no authority that requires a tribunal to labor the obvious in its findings of fact. Indeed, it seems clear that by the use of the word "as" in its findings in each case that the lots were used by the University "as an automobile parking lot," the Tax Court has more than met any requirements it might have.

To require the Court to amend its findings to meet such cavil would be tantamount to "marching the king's men up the hill and then marching them down again. . . ."¹⁷

CONCLUSION

It is submitted that the decisions of the District of Columbia Tax Court in these cases should be affirmed.

Respectfully submitted,

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October 20, 1954.

¹⁷ Frankfurter, J., dissenting in *City of Yonkers v. United States*, 320 U.S. 685, 694 (1944).

REPLY BRIEF FOR PETITIONER

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA, ~~Circuit~~ *United States Court of Appeals*

For the
No. 12,290, *District of Columbia Circuit*

DISTRICT OF COLUMBIA, *Petitioner,*

v.

THE GEORGE WASHINGTON UNIVERSITY, *Respondent.*

No. 12,291

DISTRICT OF COLUMBIA, *Petitioner,*

v.

THE GEORGE WASHINGTON UNIVERSITY, *Respondent.*

No. 12,292

DISTRICT OF COLUMBIA, *Petitioner,*

v.

THE GEORGE WASHINGTON UNIVERSITY, *Respondent.*

No. 12,293

DISTRICT OF COLUMBIA, *Petitioner,*

v.

THE GEORGE WASHINGTON UNIVERSITY, *Respondent.*

ON PETITIONS FOR REVIEW OF DECISIONS OF THE
DISTRICT OF COLUMBIA TAX COURT

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IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,290

No. 12,291

No. 12,292

No. 12,293

DISTRICT OF COLUMBIA, *Petitioner,*

v.

THE GEORGE WASHINGTON UNIVERSITY, *Respondent.*

REPLY BRIEF OF PETITIONER

Rule 17(e)(3) of the rules of this Court permitted respondent [hereinafter called "University"] to make such counter-statement of the case as deemed necessary to correct any inaccuracy or omission in petitioner's [hereinafter called "District"] statement of the case. The University's counter-statement does not point to any inaccuracy or omission in the District's statement of the case. The University made a counter-statement merely because it was felt that the District's statement did not place the case in the "perspective" in which it was decided below (Brief, p. 2). Such a

counter-statement is not authorized by the rules of this Court and should not be considered, particularly since it contains a large amount of detail which relates to matters not material to determination of the questions presented on appeal, which questions are, of course, based upon the Statement of Points on appeal designated by the District.

The University refers to the "parking problem of the University" being complicated by the existence in the vicinity of the University of a number of apartment houses, church buildings, and government buildings (Brief, p. 3) and gives as authority for the statement a reference to the findings of the Tax Court on page 25 of the Joint Appendix. Finding of Fact No. 11 on the subject (App. 25) in no way mentions any "parking problem of the University." The parking problem, if it exists at all in light of the many parking lots and parking facilities available in the general vicinity of the University, as set forth in Findings of Fact 8 and 9 (App. 21, 22, 23), is a problem to each employee who uses a motor vehicle for transportation to and from work at the University, the same as any other member of the general public looking for a parking space. No study was made by the University of such commercial parking lots, nor was the administrative body of the University at all concerned with the fact that taxes of property owners in the District might have to be increased in order to provide parking space for employees of the University (App. 8).

The University states in its counter-statement (Brief, p. 3) that it, like its sister institutions, supplies free parking spaces to faculty and administrative employees, and then adds in Footnote 2 that the issue has apparently not been raised by the District in the Tax Court. Of course the District has not raised such issue in the Tax Court, that being a matter for decision by the respective institutions if they are not satisfied with any tax assessment. The District and the taxpayers of the District are not concerned with the fact that institutions do or do not provide free parking lots for

their employees, but it becomes a very serious tax matter adversely affecting the District's revenues and the taxpayers of the District when it is sought, as in this case, to have such parking lots exempted from taxation.

The University also states in its counter-statement (Brief, pp. 3, 16) that the District has exempted "a few parking spaces where vehicles owned by the University have been parked", and then makes the assertion (Brief p. 16) that "The conclusion must be that the University is not entitled to exemption unless the vehicles are owned by it." This statement is wholly erroneous. Mr. Herzog, Treasurer of the University, testified (Tr. 72): "Our Athletic Department has cars that have to be housed somewhere, so we have that problem." The District, in order to show that the University did not have such a problem, offered in evidence an opinion of the Corporation Counsel, D. C., approved by the Commissioners of the District of Columbia, concerning the exemption of a parking lot owned by the University. Upon objection by counsel for the University a proffer of proof was made by counsel for the District to the effect that certain lots owned by the University were exempted from taxation for the parking of busses for transporting student athletes, athletic coaches and members of the physical education staff of the University (Tr. 123, 124, 125, 126, 127). Thereafter counsel for the University conceded that the property referred to in the opinion had been exempted and, therefore, the proffered proof was not received in evidence (Tr. 125, 127). Thereafter, the Administrative Assistant to the Assessor testified (App. 19):

"Q. Now, Mr. Hall, from your personal knowledge, is it true or not that the District of Columbia Government has exempted from taxation all parking lots where such parking lots have been used for parking vehicles owned and used by the university itself? A. Yes."

A motion is now pending in this Court for an order to transmit the aforesaid proffered exhibit to this Court as a supplemental record. Such exhibit will show conclusively that the District has exempted grounds for parking not only vehicles owned by the University, but also for parking vehicles not owned by it but owned by respondent's employees and *used in conducting the respondent's activities*. In proffering such proof counsel for the District informed the Tax Court (Tr. 126): "I don't want it to appear in this record, if your Honor please, that the District Government has refused to exempt proper parking space for the University."

The University also states (Brief, p. 3) that there is involved the validity of the Tax Court's decision as to exemption of parking spaces for research officials of the University and then, invoking an inference which certainly cannot be justified from the District's Statement of Points or Questions Presented, attempts to answer an issue, not raised in the appeal, as to whether such officials were officials of the University. The District has made no such issue in this case. The sole purpose of quoting from the transcript of proceedings on page 4 of the District's brief was to show, as such brief clearly indicates, that the Tax Court had specifically excluded testimony not based upon facts but based upon a conclusion as to use of the property involved but, nevertheless, made clearly erroneous findings in each case as set forth on page 5 of the District's brief. The testimony quoted was applicable to all cases involved in these four appeals (Tr. 63, 77, 80).

The remainder of the University's counter-statement on pages 4 and 5 of its brief consists of argument and in the view of counsel for the District has no place in a counter-statement. It is deemed pertinent at this point, however, to answer the University's contention in its brief on page 5 in the last paragraph of the counter-statement with respect to the District's argument for failure of the Tax Court to

make separate findings of fact and conclusions of law. The University states that the District's reproof of the Tax Court in this respect "is apparently made in passing, for it does not appear to rise to the dignity of an issue in this appeal." It was not made an issue in this appeal because that matter has been sufficiently raised by the District in the case of *District of Columbia v. Ghent* now pending in this Court (No. 12,199) and, also, because the District wanted these important parking lot cases presented for decision without collateral issues to becloud the matter. The University further states that if an answer be required to this matter it seems fully furnished by this Court in *Food Fair Stores v. Square Deal Market* — U. S. App. D. C. —, 206 F. 2d 482, 484. We cannot agree with such statement. The *Food Fair Stores* case involved interpretation of Rule 52 (a) of the Federal Rules of Civil Procedure, which provides that in actions tried without a jury the Court shall find the facts specially and state separately its conclusions of law; but it is also provided in said rule that it will be sufficient if such findings of fact and conclusions of law appear in an opinion or memorandum of decision. Such is not the case as to the District of Columbia Tax Court. It is specifically required by statute (Sec. 47-2403, D. C. Code, 1951) that the Tax Court "shall make separate findings of fact and conclusions of law, and shall render its decision thereon in writing." Nothing whatsoever is provided in that law for an opinion or for any deviation from the clear requirements of the statute that the Court must make separate findings of fact and conclusions of law.

The University's brief is so full of inferences and innuendos that it is difficult to recognize the tax question presented to this Court for decision. The District cannot be called upon in a tax exemption case to mentally meander into every hypothesis conceived by a tax exemption claimant as the University has attempted to do in this case, including conjecture as to future construction of buildings

under the Zoning Regulations (University's Brief, pp. 14-16) and speculation as to the District's attitude regarding an unreported case involving a student parking lot the record of which is not before the Court. It would seem to be completely unnecessary to remind counsel for the University that it is solely a prerogative of the District to determine which decisions of the Tax Court adverse to the District will be presented to this Court for review.

The University (Brief, p. 12) criticizes the District because it did not appeal the Tax Court's decision in *National Catholic Welfare Conference v. District of Columbia*, 76 Wash. Law Rep. 441, which involved exemption of a lot used in part for the delivery of material in and out of the exempted building and for parking 15 or 20 cars. It is then stated in the University's brief (p. 12): "In the instant case, Docket No. 12,291 is concerned with 7 parking spaces. Docket No. 12,292 is concerned with 13 parking spaces. Docket No. 12,293 is concerned with 7 parking spaces. The easy transition from what was *de minimus* in 1948 to what is today a matter of moment for this Court is not explained." This Court's attention was not called to the fact that, also, in the instant case, Docket No. 12,290 is concerned with 150 parking spaces (App. 26), making a total of 177 parking spaces. Aside from this, which ought to be a sufficient explanation, many reasons were pointed out in our brief (pp. 9, 10, 11, 15, 17 and 18) why the question is today a matter of moment, including the fact that to exempt grounds used by the University's employees for parking their automobiles while at work would cast an additional burden upon the taxpayers of the District; that such tax exemption would be a clear discrimination among members of the general public of which the University's employees are a part; and that it would be clearly contrary to the policy of the Congress of the United States concerning the establishment and operation of parking lots for the general public and of exempting grounds owned by institutions favored by

tax exemption as to their buildings. If this be not sufficient, there are other reasons why this parking lot matter is a serious one. It is well to bear in mind, we think, that the University's employees, contrary to the University's assertion that they are entitled to a *private parking lot free of charge* (University's brief, pp. 6, 13), are no different from any other persons employed in earning a livelihood in the District of Columbia. The University's employees are no more entitled to free parking privileges at the expense of taxpayers of the District, who must shoulder the additional burden of taxation which would result from such exemption, than are the other employees of the general public.

The Congress of the United States has been acutely aware for many years of the serious revenue-producing problem of the District of Columbia. In 1949, while the District of Columbia sales and use tax bills were pending in the Congress, the House Committee on appropriations, in Report No. 167, 81st Congress, dated March 1, 1949, after discussion of a deficit which would result from the appropriation which it intended to approve, stated on p. 2:

"It is further pointed out by the committee that under the District Code (47 D. C. 501) the Commissioners of the District are empowered and directed to fix annually such rates of taxation on real and personal property as will produce the money necessary to defray the share of the expense of the District during the year for which the rate is fixed. It is the belief of this committee that such revenues as are needed to meet the anticipated deficit in this bill can be raised by the Commissioners of the District of Columbia taking action in line with the above-mentioned statute."

Again, in the Hearings before the Joint Sub-Committee on Fiscal Affairs of the House and Senate Committees in the District of Columbia on H. R. 7389, 83rd Congress, 2nd Session, a bill to authorize and finance a program of public

works construction for the District of Columbia, and for other purposes, the financial situation of the District of Columbia was thoroughly considered. A copy of this document has been lodged with the Clerk of this Court for the convenient use of the Court. The following extracts from the aforesaid document are deemed pertinent (pp. 376 and 377):

“Real-estate taxes

“Real-estate taxes are an ever-recurrent subject of discussion when revenue and tax problems arise in the District of Columbia. In a statement before the Joint Fiscal Affairs Committee on the District of Columbia on February 8, 1949, the then Assessor stated: ‘I believe in order to avoid further decentralization, particularly in respect to business properties, that every effort should be made to preserve real-estate values in the District of Columbia, and in my opinion a further increase in real-estate taxes will not contribute to that end.’

“Certain facts about the District of Columbia are pertinent:

“(a) The total area of the District comprises 43,677 acres, of which 4,404 acres are water and 39,273 are land. Of the land area, 8,610 acres are in public streets and alleys, 13,111 acres are owned by the United States, 1,088 acres are owned by the District government, 1,873 acres (foreign governments and private owners) are exempt, and only 14,591 acres, or 47.6 percent of the land area exclusive of streets and alleys are subject to taxation. A statement of real-estate assessments, (taxable, United States, District of Columbia, and privately owned exempt) for all fiscal years 1935-54 is attached.”

. . .

“(f) The list of tax-exempt property, other than United States and District, grows steadily. There are approximately 40 pending requests for exemp-

tion in the Assessor's Office, and bills for special exemptions have been introduced in both Houses of Congress. More and more national and international groups are establishing headquarters in Washington. Foreign governments are increasing their original holdings or acquiring embassy and legation property for the first time. The District is the site of five major universities with increasingly large holdings of real estate. In short, the District of Columbia is the center of diplomatic, social, educational, religious, [and] scientific groups."

* * *

"(1) An increase in the real-estate rate could have many unfavorable reactions—acceleration of the movement of persons and business to the suburbs in Maryland and Virginia, increased rents, higher prices of goods and services, and hardship to thousands who are now struggling to purchase homes and to operate businesses."

The matter above-quoted was included in the statement of James L. Martin, Finance Officer-Assessor of the District of Columbia.

Notwithstanding the statements quoted above, made by Mr. Martin, the fact that only 14,591 acres or 47.6 percent of the land area exclusive of streets and alleys are subject to taxation, and the fact that the list of tax-exempt property, other than that of the United States and the District, grows steadily, the Committee, scratching the bottom of the tax barrel, recommended and the Congress enacted a provision in the District of Columbia Public Works Act of 1954, under Title XV thereof (68 Stat. 119), prohibiting the taxation of real property after July 1, 1954, at less than \$2.20 per \$100.00. For the previous fiscal year the tax rate was \$2.15 per \$100.00¹ based upon the value of taxable real property at June 30, 1954, in the amount of \$1,805,409,542.00² this 5¢ increase imposed upon the taxpayers of the District for the

¹ Page 377, Hearings on the Public Works Construction bill, *supra*.

² *Id.*, page 379.

fiscal year beginning July 1, 1954, additional real property taxes in the amount of \$902,704.77. It will be observed from the list of taxable and exempt real property attached to the statement furnished to the aforesaid Committee by Mr. Martin that in 1935 a total value of \$96,137,951.00 in real property was exempted for private owners (other than the United States and the District of Columbia) which would have produced a tax for that fiscal year of \$1,442,076.00 and which, through the years, has grown to a value of \$171,445,606.00 for 1954 which would have produced a tax for that fiscal year of \$3,686,081.00. Under these circumstances it is unlikely that Congress would approve of the exemption of grounds for the free parking of automobiles used by employees of institutions favored by tax exemption at the expense of District taxpayers, particularly since the District of Columbia Motor Vehicle Parking Facility Act of 1942, 56 Stat. 93, ch. 76 (Title 40, ch. 8, D. C. Code, 1951), requires that there shall be no discrimination in rates or privileges *among the members of the public* using parking facilities under the provisions of said Act.

On pages 17 and 18 of the University's brief, it is argued that actual use of the parking lots involved by the University's employees is actual use by the University and, therefore, they should be exempted. Nothing could be further from the fact. The automobiles used by the University's employees to furnish them transportation to and from work are certainly not in any way used either by the University or by the employees in carrying on the activities and purposes of the University which purposes are, as pointed out in the District's brief (p. 3), solely and exclusively *for the education of youth*. There is no real difference between this University's purposes and the purposes of Howard University. With respect to the latter University, this Court had occasion to consider the question whether its property was used "for the education of

youth" under the statutes there involved. This Court stated (*Howard University v. District of Columbia*, 81 U. S. App. D. C. 40, 155 F. 2d 10):

"* * * Both parties agree that the result depends upon whether the real estate upon which the assessment is levied, and which admittedly is now being used only for the purpose of securing income from rents, is under the exemption provision of the 1882 Act, property 'used only for the purposes set forth in the charter' of the University, i.e., 'the education of youth.' Counsel for the University says the question should be answered in the affirmative because, as he insists, the primary purpose in the acquisition of these properties was educational. Counsel for the District, to the contrary, contend that since the statute exempts property of the University *used only* for the education of youth, and where, as here, it is used to acquire income and not physically used for educational purposes, the exemption does not apply."

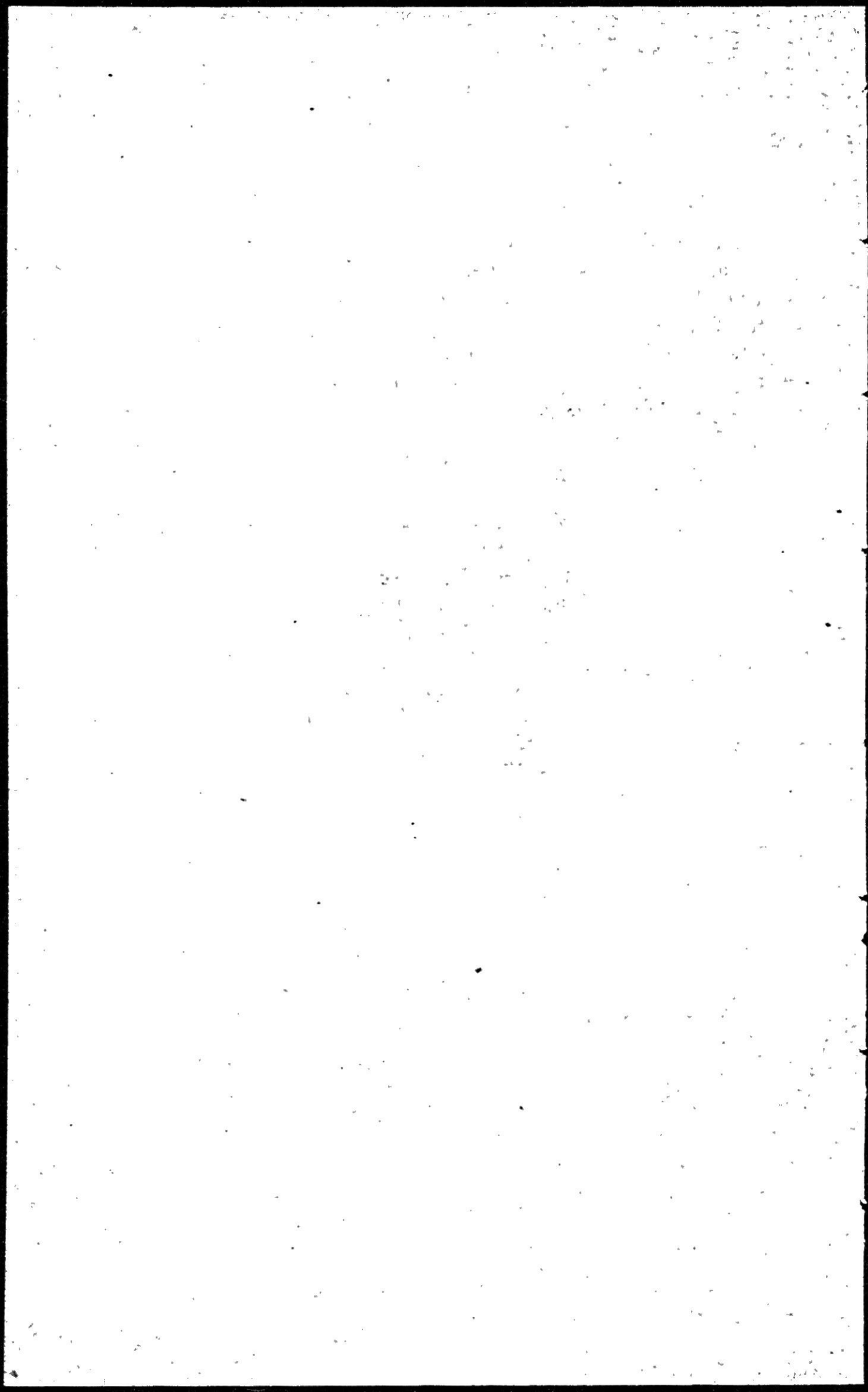
It is argued in the University's brief (p. 8) that the statutes immediately preceding the one now in effect exempted grounds only when "absolutely required" and that, accordingly, under the statute presently in force (District's brief, p. 6) the exemption provision was relaxed relating to "grounds". This is not correct with respect to educational institutions. Section 47-801a, D. C. Code, 1940 (Supp. VII), cited by the University pertains to the real property tax exemption Act of December 24, 1942, which is the statute involved in the present case. Apparently, counsel for the University is referring to Section 47-801, D.C. Code, 1940, which pertained to the exemption of various institutions other than educational institutions. The law applicable to the exemption of real property of educational institutions prior to the Act of December 24, 1942, *supra*, was Section 5 of the Act of July 1, 1902, 32 Stat. 616, ch. 1352 (Section 47-802, D. C. Code, 1940), which exempted property "used for educational

purposes that is not used for private gain." That provision of law was specifically repealed by Section 7(f) of the Act of December 24, 1942, *supra*. Under the 1942 Act, therefore, grounds of educational institutions not only must be "reasonably required" but, also, must be "actually used" for educational purposes in order to qualify for tax exemption. The pronouncement of this Court in the *Howard University* case, *supra*, that property which is "not physically used for educational purposes" is not entitled to tax exemption is, therefore, applicable. The University's attempt in this case to obtain tax exemption of its property not actually used by it is plainly a device to defeat the determination of Congress to limit grounds for future expansion to such grounds as belonged to exempted organizations as of July 1, 1942, as set forth in Section 1(r)(2) of the statute here involved (see the District's brief, pages 17 and 18). The area of the District of Columbia can not be expanded as can the areas of other cities in the United States. It is readily apparent that if this University and others are permitted to acquire large areas of land, like the University in the present case, and obtain exemption of such land by permitting their employees to use it for parking their automobiles while at work, the limitation specifically placed on the acquisition of additional grounds will be invalidated. As indicated in the opinion of the Court in *First Baptist Church v. Pittsburgh* (1941), 341 Pa. 568, 20 A. 2d 209, cited in the District's brief (p. 20), there would be little limitation placed on the amount of land that may be taken over by an institution favored by tax exemption, thereby casting an additional burden on other taxpayers as heretofore shown. Unquestionably, if the University prevails in its contention in this case, other institutions whose buildings are entitled to exemption from taxation would apply for tax exemption on the same basis. Such a situation would play havoc with the District's revenue producing system. It is submitted that the District's revenues ought not to be jeopardized in a case of this

nature. The cases are abundant and unswerving as set forth in the District's brief (pages 12 to 14), that no claim of exemption can be sustained unless within the express letter or the necessary scope of the exempting clause. The exemption here claimed not only does not come within the express letter of the exempting clause, it is excluded, as clearly pointed out by this Court in *Howard University v. District of Columbia*, *supra*.

Respectfully submitted,

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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

*United States Court of Appeals
For the
District of Columbia Circuit*

Nos. 12290-1-2-3

FILED

FEB 24 1955

DISTRICT OF COLUMBIA, *Petitioner,*

Joseph W. Stewart
CLERK

v.

THE GEORGE WASHINGTON UNIVERSITY, *Respondent.*

PETITION FOR REHEARING EN BANC

The District of Columbia, petitioner in the above-entitled causes, petitions the Court for a rehearing en banc thereon, and upon such further consideration to enter a judgment reversing the decisions of the District of Columbia Tax Court. The decisions of the Tax Court held that certain unimproved grounds (lots) owned by the University, but actually used only by employees of the University for parking their privately owned motor vehicles while at work, were exempt from property taxation under a statutory provision which exempted only "Grounds belonging to and reasonably required and actually used for the carrying on of the activities and purposes" of the University.¹

The University's sole and exclusive purpose, as set forth in the statute of incorporation (6 Stat. 255), is the education

¹ The statutory provision is fully quoted under "STATUTE INVOLVED" on page 6 of the brief for the District of Columbia in these cases.

of youth. Circuit Judge Danaher, in his dissenting opinion, points out that the District of Columbia government has already exempted from taxation University-owned parking lots where such grounds are employed for parking vehicles owned ~~and used by the University itself; and it has made~~ no difference in the granting of such exemption that several of the vehicles were owned by employees of the University, so long as such vehicles were employed in the activities and purposes of the University.² Circuit Judge Danaher points out that the Court now would extend the exemption to certain lots owned by the University but actually used for the free parking of 177 cars which are the private property of certain University employees and faculty members. Such vehicles are not used for any of the activities or purposes of the University; they simply remain parked on the University-owned grounds while the employees are at work.

The testimony as to all of the 15 "grounds" (lots) involved clearly shows that none of them was used by the University, either constructively or actually, for any purpose whatsoever (App. 5, 11, 14, 15, 16). The vehicles parked on such grounds, furthermore, were not used by the employees who owned them, or by anyone else, for any of the activities or purposes of the University; the vehicles simply remained parked on the University-owned grounds while the employees were at work in the same manner that any member of the general public parks his automobile on a parking lot, in a parking building, or on the public streets, while at work.

Notwithstanding these undisputed facts, the majority opinion of the division of this Court which heard and considered the cases holds that the parking lots involved, which are used only by the University's employees while at work, "*are used for the carrying on of its activities and purposes.*" (Emphasis supplied.) This decision is novel in the law of:

² See pages 3 and 4 of the reply brief for the District of Columbia and the supplemental record transmitted to and filed in this Court.

master and servant. If it applies in the relationship of master and servant in respect of a university and its employees, it must likewise apply in the same relationship in respect of other employers and employees in all phases of life and commerce. The decision certainly holds that use of a parking lot for parking the automobile of an employee while at work is a use of the property for carrying on the activities and purposes of the employer. In *Schweinhaut v. Flaherty*, 60 App. D. C. 151, 49 F. 2d 533, cert. denied 283 U. S. 864, and *Baltimore & O. R. Co. v. Papa*, 77 U. S. App. D. C. 202, 133 F. 2d 413, this Court has held that a master is responsible for the tortious acts of a servant done in the course of his employment, regardless of whether the servant is obeying the master's orders. By the great weight of authority, the question whether an employee has acted within the scope of his employment generally involves an inquiry into the contract of employment and the relation of the employee's acts to the services performed by him pursuant to his employment. If, as a matter of law under the decision of the majority in these cases, an employee is actually performing services pursuant to his employment merely by the use of a parking lot, parking building, or the public street for parking his automobile while at work, then the employer would be liable for any damages resulting from the negligence of the employee in the parking or operation of such automobile. 5 *Am. Jur., Automobiles*, Secs. 573, 574; 35 *Am. Jur., Master and Servant*, Sec. 579. It does not appear that this aspect of the matter and the far-reaching effect which might result were considered by the Court. For this reason alone, it is firmly believed that this Court, sitting en banc, should rehear and reconsider these cases.

Another compelling reason plainly exists to warrant rehearing and reconsideration of these cases en banc. Circuit Judge Danaher pointed out in his opinion that if tax exemption can be obtained for 177 privately owned cars, it can be done for the full 2,000 members of the University's staff, and

that the record shows that at least 60 per cent of the 2,000 employees and faculty members could qualify for free parking of their own vehicles if the University could provide the space. He then states:

“ * * * The District fears that the University will acquire additional grounds for that very purpose and withdraw the same from the tax rolls if tax exemption shall be extended to such grounds. That such fears are not without foundation may be deduced from testimony in the record that University authorities are ‘very anxious to acquire, within a certain area, all of the property that we can that fits into the orderly development of the University.’
 * * * If the majority is correct, this convenience is to be achieved by removing taxable property from the tax rolls and placing an additional tax burden on the remaining taxpayers of the District.”

It is no supposition that if the majority opinion is correct the additional tax burden would have to be borne by the remaining taxpayers of the District. This is provided for in Sec. 47-501, D. C. Code 1951, and was specifically recognized in 1949 by the House Committee on Appropriations for the District of Columbia as set forth on page 7 of the reply brief of the District of Columbia in these cases. This burden would be no small one because, since 150 square feet of space is required for parking one automobile (Tr. 98), it would require over 4 acres of land to provide parking spaces for the 60 per cent of the University's 2,000 employees presently “qualified” for such spaces, and nearly 7 acres to provide parking spaces for the full 2,000 employees. If the majority opinion is allowed to stand, every organization entitled to exemption of buildings under the Act of December 24, 1942, 56 Stat. 1089 (Sec. 47-801a, D. C. Code 1951), could acquire large areas of additional grounds for use as employee parking lots and have them exempted from taxation. Aside from the unlawful discrimination this would create in

violation of the District of Columbia Motor Vehicle Parking Facility Act of 1942 referred to by Circuit Judge Danaher in his dissenting opinion, the serious effect such mushrooming of tax exemptions would have on the revenues and taxpayers of the District would be tremendous, as set forth in the briefs filed in these cases by the District of Columbia.

Another reason why this Court, sitting en banc, should rehear and reconsider these cases is that the majority of the division of this Court failed to follow the well-established doctrine of strict construction of tax exemption statutes which has been consistently followed by this Court. The rule, set forth and supported by decisions of this Court and the Supreme Court of the United States in the brief filed by the District of Columbia in these cases (pages 12-14), is clearly stated in *Ford v. Delta & Pine Land Co.*, 164 U. S. 662, 666, 41 L. Ed. 590, 592:

“It is abundantly established by the decisions of this as of other courts that exemptions from taxation are to be strictly construed, and that no claim of exemption can be sustained unless within the express letter or the necessary scope of the exempting clause. * * *”

Circuit Judge Danaher thought the doctrine of strict construction should be applied in these cases. After expressing that view, Judge Danaher stated:

“In my view, the 1942 Act was talking about grounds ‘actually used’ for the educational purposes of the University, not about private parking for privately owned cars even though they belong to persons connected with the University.”

The majority opinion states that if the University brought members of its staff to and from work in its own cars, such cars would be “used for the carrying on of the activities and purposes of the University.” We respectfully cannot agree.

The stated purposes of the University do not include the transportation of workers to and from work; and we do not understand how the transportation of workers to and from work can be said to be an educational activity or purpose. In respect of such activity this Court had the following to say in *Government Services, Inc. v. District of Columbia*, 88 U. S. App. D. C. 360, 189 F. 2d 662, cert. denied 342 U. S. 828, in which case tax exemption claims were denied:

“* * * For example, the street car company at the seat of government obviously ‘lessens the burdens of government’, in that if it did not exist the government would have to transport government workers from their homes to their places of duty; but we suppose that no one would argue that the transit company is a charitable organization.”

In deciding these cases the majority of the division of this Court failed to consider the District’s second point on appeal that the Tax Court’s findings of fact and conclusions that the grounds involved were used by the University are clearly erroneous and therefore invalid (Brief. pp. 20-23). We pointed out (Brief, pp. 3-6, 20-23) that the only evidence in the case points clearly to the fact that the grounds here involved were not used in any respect by the University for its activities and purposes, but were used only by individuals for their exclusive purposes.

WHEREFORE, Petitioner, the District of Columbia, prays the Court:

(1) To vacate the judgments entered herein on February 10, 1955;

(2) To grant rehearing, reargument and further consideration before all the judges of the Circuit en banc; and,

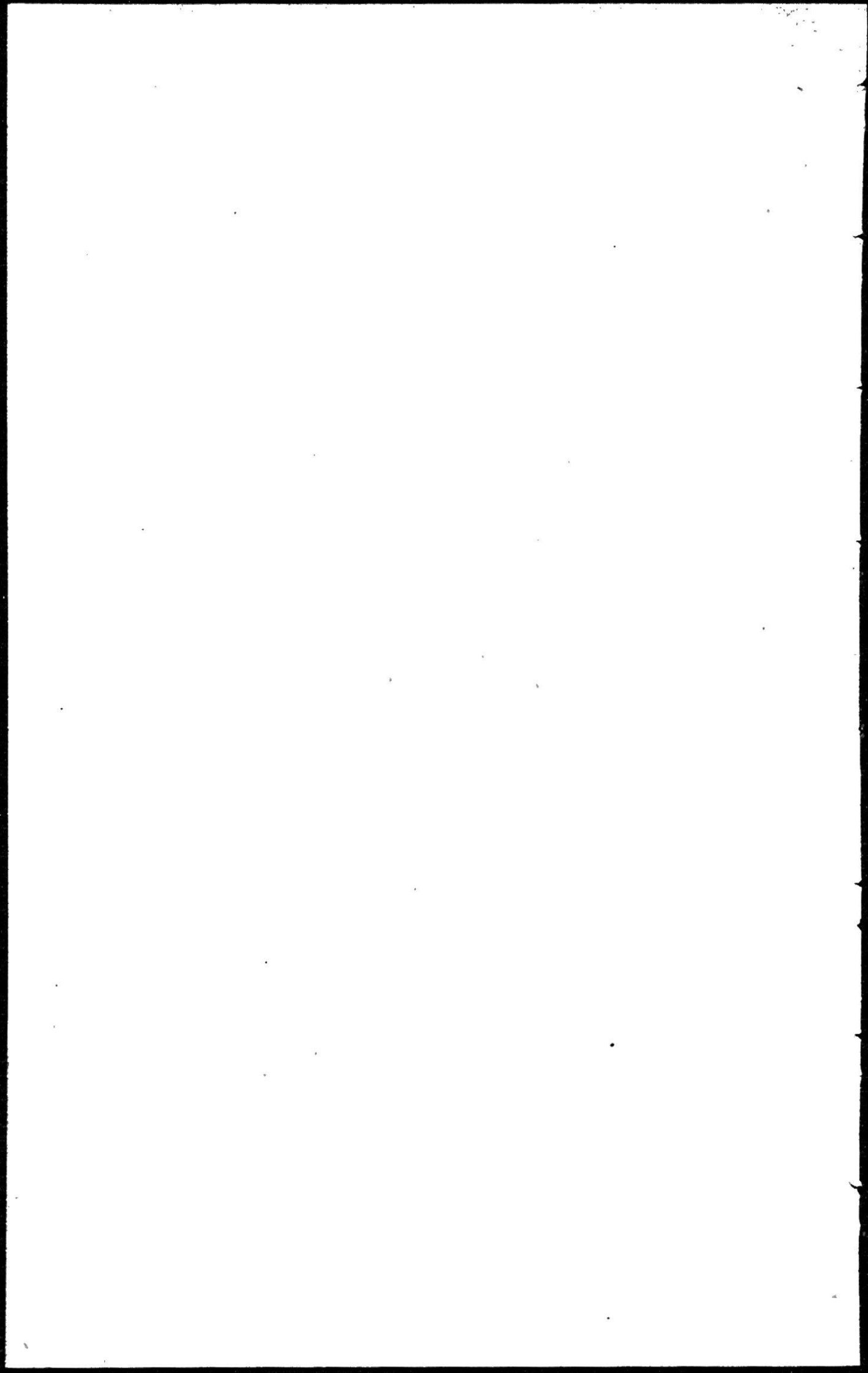
(3) Upon such further consideration, to enter a judgment reversing the decisions of the District of Columbia Tax Court and holding that the grounds involved herein are not exempt from taxation.

Counsel for petitioner hereby certify that this petition is filed in good faith and not for any purposes of delay.

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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA ~~CIRCUIT~~ *For the District of Columbia Circuit*

Nos. 12290-1-2-3

FILED

MAR 7 1955

DISTRICT OF COLUMBIA, *Petitioner,*

Joseph W. Stewart
CLERK

v.

THE GEORGE WASHINGTON UNIVERSITY, *Respondent.*

ANSWER TO PETITION FOR REHEARING EN BANC

The George Washington University, respondent in the above entitled causes, for its answer to the District of Columbia's petition for rehearing en banc states that the petition alleges no reason whatsoever for this Court to rehear en banc the holding of the division of this Court which heard and carefully considered the issues in these cases.

The petition merely restates, often in the precise language, its brief submitted to this Court. The issues, which were entirely uncomplicated, were fully considered by this Court, both by extensive briefs and oral argument. The decisions of the District of Columbia Tax Court, where the issues were also fully briefed, argued and carefully considered, were affirmed by per curiam opinion. There would appear no reason, and no reason is alleged, as to why this Court should adopt the extraordinary procedure of granting this petition for rehearing en banc.

J. EDWARD BURROUGHS, JR.

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